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The Power To Protect Themselves: Gender, Protective Labor Legislation, And Public Policy In Michigan, 1883-1913

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'THE POWER TO PROTECT THEMSELVES': GENDER, PROTECTIVE LABOR LEGISLATION, AND PUBLIC POLICY IN MICHIGAN, 1883-1913

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DEDICATION

I dedicate this work to my parents, Karen Holtman and Russell Holtman, for their endless support of my dreams and for listening.

And to my husband, Jonathan French, for his love and for providing me with a foundation for success.

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Brevity forces me to omit the names of many important people. Please know that although I may not have named every person, each member of my community is important to me and I appreciate their support of my work.

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Introduction

Michigan: "Great in the Things that Make Men Great"

In his 1883 ruling in the case of *Edwards v. McEnhill*, Michigan Supreme Court Justice Thomas Cooley wrote that a mason taking "his wife into partnership in his business may well excite surprise," implying that married women had no capacity to make contracts while reinforcing the masculine nature of wage work.[1] In *Edwards*, Cooley affirmed conventional wisdom—that men were primary agents in the workplace, and that women worked occasionally or secondarily. By 1915, however, the same Michigan Supreme Court approved a law that seemed to place men and women on the same industrial footing.[2] A little known struggle spearheaded by men to control the workplace occurred in the intervening three decades. Through union solidarity, men found a way to achieve protection without sacrificing control. The period between the *Edwards* and *Mackin* cases reveals how male workers, through work stoppages, petitions, lawsuits, and protective labor laws, attempted to gain traction in contractual negotiations—a power that they never fully realized. Reactions to this fight shaped public policy. To understand the emergence of protectionist legislation for both men and women, we need to look at Michigan's economic potential and its reform movements, tensions over

[1] *Edwards v. McEnhill*, 51 Mich. 160 (1883).

[2] In the *Mackin* case (1915), Michigan Supreme Court judges approved a law that protected working men against common law negligence doctrine, acknowledged married women's work, and enhanced state control over labor relations. The 1912 employer liability and workmen's compensation act sanctioned married women's work by declaring that a husband was to be presumed wholly dependent on his wife if she died during employment. The law also removed common law restraints that had previously disadvantaged male laborers when trying to contract their labor by stating that assumption of risk, employee negligence, and fellow servant doctrines could not be used as default rules by employers to avoid claiming liability. *Mackin v. Detroit-Timkin Axle Co.*, 187 Mich. 8 (1915); *Public Acts of Michigan*, 1912, no. 10.

industrial relations, workers' experiences in court, and the operation of gender in crafting public policy.

Economic Development and Reform

In the nineteenth century, Michiganians celebrated industrial innovation and booming commerce. As the words to Michigan's state song indicated, it was "great in the things that make men great."[3] Because of its economic potential, Michigan drew immigrants in droves. By 1880, Irish and German settlers comprised the two largest immigrant groups. Because of their reputation as hard workers, state agencies actively recruited Germans who created workingmen's groups that encouraged workers to question their role in the industrial machine. Irish immigrants influenced Michigan's political scene through their support for the Democratic party. By the 1880s, a powerful labor movement, led by native-born Joseph Labadie (Master Workman of the Detroit Knights of Labor) and supported by various immigrant groups, swept through Michigan.[4]

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[3] Scholars have explored numerous aspects of Michigan's political, economic, and social terrain. They have noted Michigan's differences, while acknowledging that Michigan often expressed national trends. The best overview of Michigan's legal history can be found in Paul Finkelman and Martin Hershock, eds., *The History of Michigan Law* (Athens: Ohio University Press, 2006). Labor scholars often remark on Michigan's importance to the history of labor unions. Richard Oestreicher argues that a legacy of the 1880s labor upheaval was not greater working class solidarity, but the prompting of a reform movement by people like Hazen Pingree, mayor of Detroit and, later, governor of Michigan. Richard Oestreicher, *Solidarity and Fragmentation: Working People and Class Consciousness in Detroit, 1875-1900* (Urbana: University of Illinois Press, 1986). The literature of Michigan's history also includes many biographies of leading politicians or judges. Melvin Holli shows that the social reform movement in Detroit went further than other Progressive initiatives of the time and affected the course of social reform in a number of mid-western and eastern cities. Melvin Holli, *Reform in Detroit: Hazen Pingree and Urban Politics* (New York: Oxford University Press, 1969). For song, see Douglas Malloch, "Michigan, My Michigan", 1902, in "History of Michigan Federation of Women's Clubs." *Michigan History Magazine* 12 (January 1928), 70-75.

[4] By 1890, a quarter of Detroit's population was foreign-born. Michigan's main ethnic groups at the turn of the century were the Irish, Germans, Scandinavians, Cornish, French-Canadiens, Poles, and Italians. Bruce Rubenstein and Lawrence Ziewacz, *Michigan: A History of the Great Lakes State* (Wheeling: Harlan Davidson, 2002), 128. For reasons of scope and evidentiary

Tension existed between reformers who supported state power to assist women and children while protecting private property, and those on the labor left who wanted the state to use its police power to alleviate capitalists' oppression of everyone.

Michigan's abundant natural resources fueled industrialization. Michigan's lumber, copper, and iron provided the underpinnings for industrial capitalism.[5] Surrounded on three sides by the Great Lakes, Michigan's agricultural production boomed in the post-Civil War period. Its climate was ideal for growing tobacco; by the 1880s, Detroit produced more chewing tobacco than nearly any other location in the country.[6] Detroit cigar manufacturers rolled almost 40 million cigars annually.[7] Michiganians manufactured cereals, sugar, railroad cars, stoves, furniture, canned foods, seeds, carriages, paper, chemicals, cement, pharmaceuticals, beer, and

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support, this dissertation will not explore ethnicity. When possible, secondary source material about ethnic groups has been included.

[5] By the late 1860s, Michigan was the leading lumber-producing state in the nation. In the late nineteenth century, copper was one of Michigan's most profitable industries. Michigan manufacturers also produced coal, gypsum, and salt. For a comprehensive study of the lumber industry, see Jeremy Kilar, *Michigan's Lumbertowns: Lumbermen and Laborers in Saginaw, Bay City, and Muskegon, 1870-1905* (Detroit: Wayne State University Press, 1990). On copper, see Larry Lankton, *Hollowed Ground: Copper Mining and Community Building on Lake Superior* (Detroit: Wayne State University Press, 2010).

[6] Willis Dunbar and George May, *Michigan: A History of the Wolverine State* (Grand Rapids: William B. Eerdmans Publishing Co., 1995), 409.

[7] In the mid-nineteenth century, cigar manufacturers sought artisans from Germany, but by the latter part of the century cigars were mass produced. As was common in other cigar manufacturing areas, artisans earned less money from crafting cigars, and manufacturers sought out unskilled workers to make cigars either in the factory or through piece work in the home. As more cigar manufacturing was done in the home, women increasingly became employed in the cigar industry, which fueled legislation about manufacturing in tenements. Michigan and many other states adopted laws about tenement manufacturing. In a notorious case, the New York Supreme Court invalidated a New York law that prohibited cigar-making in tenement buildings, *In re Jacobs*, 98 N.Y. 98 (1885).

ships. By 1900, the state boasted 16,807 manufacturing plants. As many as twenty-five percent of the state's working population held factory jobs.[8]

As in the rest of the nation, many Michiganians participated in reform campaigns. Educational reform and temperance agitation transformed the political scene.[9] In 1833, the first Michigan Temperance Society was formed; these "winged messengers" campaigned around the state for prohibition.[10] Some Michiganians championed women's and black men's rights, although Michigan legislators were slow to enfranchise women. In 1874, when the Michigan legislature refused to ratify a pro-suffrage ballot proposal, Susan B. Anthony blamed it on liquor interests; in her words, "every whiskey maker, vendor, drinker, every gambler, every Libertine, every ignorant besotted man" was against them.[11] Despite efforts by nationally renowned suffragists, Michigan women gained the vote only in 1919—one year before the 19th amendment

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[8] Dunbar and May, *Michigan: a History*, 394.

[9] In the early nineteenth century, the Second Great Awakening spurred religious revivals that emphasized the perfectibility of humankind. Inspired by this notion, reformers adopted platforms such as abolition, temperance, women's rights, education, and prison reform. Michigan enjoyed a reputation as a reform state. For the political culture of Michigan, see Martin J. Hershock, *The Paradox of Progress: Economic Change, Individual Enterprise, and Political Culture in Michigan, 1837-1878* (Athens: Ohio University Press, 2003). For temperance reform in Michigan, see John W. Quist, "An Occasionally Dry State Surrounded by Water: Temperance and Prohibition in Antebellum Michigan," in *The History of Michigan Law*, ed. Paul Finkelman and Martin J. Hershock (Athens: Ohio University Press, 2006), 61-82.

[10] "Annual Report of the Auxiliary in Mt. Morris, Genesee County, Michigan," *Advocate of Moral Reform and Family Guardian*, January 1, 1839.

[11] Susan B. Anthony as quoted in Bruce Rubenstein and Lawrence Ziewacz, "Michigan in the Gilded Age: Politics and Society," in *Michigan: Visions of Our Past*, ed. Richard Hathaway (East Lansing: Michigan State University Press, 1989), 142.

was enacted. Moreover, while many Michiganians adopted an abolitionist stance before statehood, lawmakers refused to grant African-American men equal civil and political rights.[12]

Into the twentieth century, Michiganians built on these experiences. Michiganians faced rapid industrialization and social change with both fear and anticipation. Reformers feared that hasty change could encourage political and social anarchy. Middle-class reformers, especially Progressives, sponsored reforms designed to clean up government, relieve pressures on the poor, hold corporations accountable, improve urban environments and factory conditions, and advance public morality.[13] As earlier, women were encouraged to engage in reform efforts. Kalamazoo activist Caroline Bartlett Crane took up the banner of reform: calling for clean streets, meat inspections, garbage collection and disposal, and other public health improvements. Known as "America's Housekeeper," Crane thought that women had an obligation to improve Michigan's municipalities. But men also engaged in reform activities. Progressive politicians Hazen Pingree and Chase Salmon Osborn worked to enhance labor laws and encourage better treatment of workers.[14]

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[12] Michigan was an anti-slavery state. In 1855, Michigan passed a personal liberty law to forbid cooperation with the federal 1850 fugitive slave law; the law banned the use of state jails to house captured slaves and "prohibited state and local officials from participating in the capture, incarceration, or return of fugitive slaves." Paul Finkelman, "The Promise of Equality and the Limits of Law," in *History of Michigan Law*, ed. Paul Finkelman and Martin Hershock, (Athens: Ohio University Press, 2006), 189. But the passage of a personal liberty law did not mean that Michiganians thought blacks were equal to whites in all ways. For a discussion of Michigan law and racial tensions, see Roy E. Finkenbine, "A Beacon of Liberty on the Great Lakes: Race, Slavery, and the Law in Antebellum Michigan," in *History of Michigan Law*, ed. Finkelman and Hershock, (Athens: Ohio University Press, 2006), 83-107.

[13] On women's role in reform, see, for example, Robyn Muncy, *Creating a Female Dominion in American Reform, 1830-1930* (New York: Oxford University Press, 1991).

[14] Scholars disagree about the intent of Progressive-era reformers. Was the Progressive movement a contest between mainstream Americans and radicals? Was it an elitist or democratic impulse? See Arthur Link and Richard L. McCormick, *Progressivism* (Arlington Heights: Harlan Davidson, 1983); Steven Diner, *A Very Different Age: Americans of the*

Liberty and Protection: the Labor Scene

Michiganians were sharply divided on the labor question. In the nineteenth century, legislators took a gradual approach to protecting their workers. They enacted some safety and health codes, but did nothing to restrict overwork of employees (except in dangerous occupations), hold employers liable, compensate for workplace accidents, exact minimum wages, or allow for worker independence. State police powers allowed state governments to limit property rights for the welfare of citizens, but the judiciary did not grant the state unrestricted police powers. Although many reformers believed that labor laws affecting women and children were part of good government, they hesitated to extend the same protection to male workers who they believed had perfect freedom to contract their labor—a property right to be protected at all costs. Reformers also feared the growing power of labor unions and wanted them to be held accountable for their actions.[15] Since American law both facilitated and limited workplace reform, unions and reformers used the law to try to solve labor problems. Reformers employed the law to force state control over workers and employers, while labor activists proposed legislation that expanded their influence over industrial relations.

Progressive Era (New York: Hill and Wang, 1998); Michael McGerr, *A Fierce Discontent: The Rise and Fall of the Progressive Movement in America, 1870-1920* (New York: Free Press, 2003); and Shelton Stromquist, *Reinventing "The People": The Progressive Movement, the Class Problem, and the Origins of Modern Liberalism* (Urbana: University of Illinois Press, 2006). On Michigan's Progressive reformers, see Holli, *Reform in Detroit*, and Raymond Fragnoli, *The Transformation of Reform: Progressivism in Detroit and After, 1912-1933* (New York: Garland Press, 1982).

[15] For the tension between Progressive reformers and labor unionists, see Ruth O'Brien, "Business Unionism versus Responsible Unionism: Common Law Confusion, the American State, and the Formation of Pre-New Deal Labor Policy," *Law and Social Inquiry* 18 (Spring 1993), 255-296.

In the midst of this often harrowing scene, workers and capitalists battled for power.[16] Across the country laborers threw down their tools to protest worker conditions and terms of labor. Of 348 strikes in Michigan between 1883 and 1907, 80% of them demanded changes that would allow union recognition and workers to control wage payments and hours of labor.[17] Wage disputes, many for protective wage legislation, formed the basis for forty-two percent of all strikes in the state. Consistent and higher wages would allow men to be breadwinners. Workers conducted twenty-three percent of the strikes for hours regulation that would supersede individual contracts. Fifteen percent were fought for corporate recognition of unions and related legislation. The capitalist idea that success was to be achieved through solitary efforts

[16] Our knowledge of the labor movement reflects a historiographical shift to social history. Inspired by the rights movements of the 1960s and 1970s, scholars redefined the nature of historical study and brought to the forefront the history of the average American; historians re-wrote the narrative to include the working class. E.P. Thompson and Herbert Gutman were foundational scholars of workers' experiences. Thompson in *The Making of the English Working Class* (1963) told the story of class experience in the face of industrialization. A decade later, Gutman argued that social tension arose from infusions of different types of people into the labor system. Herbert Gutman, "Work, Culture, and Society in Industrializing America, 1815-1919," *The American Historical Review* 78 (June 1973), 531-588. Within this new debate about worker's experiences and consciousness, David Brody and David Montgomery explored the experiences of immigrants and working-class radicals. See for example, David Brody, *Steelworkers in America: the Nonunion Era* (Cambridge: Harvard University Press, 1960) and David Montgomery, *Beyond Equality: Labor and the Radical Republicans, 1862-1872* (New York: Alfred Knopf Press, 1967).

[17] Michigan Bureau of Labor, *Annual Reports*, 1883-1887,1890-1891, 1893, 1895-1896, and 1899-1907. The following chart shows the main cause and number of recorded strikes in Michigan from 1883-1887, 1890-1891, 1893, 1895-1896, and 1899-1907.

Cause

	Wage Payment	Hours of Labor	Union Recognition	Conditions of Labor	Discharge of Worker	Unknown
Number of Strikes	146	79	52	28	12	31

contributed to worker and employer clashes, because many working men sought liberty through collective, not solitary behavior.[18]

Men and women faced a changing economy, politics, culture, and society. In this period of instability, union men fashioned an alternative view of manhood that allowed for class control in addition to individual control. Self-government still underwrote manhood, but unionists saw benefits in collective action to achieve authority in industrial relations. Industrialists and judges sometimes found this new view of collective manhood unmanly. Judges did not understand why working men would choose to give up individual bargaining rights for collective ones.

Traditionally, legal and social welfare historians have defined protectionism as state-sponsored labor laws designed to make conditions and terms of work better for laborers, especially women and children. Poor wages forced working-class families to use the labor of many family members. During and after the Gilded Age, all working-class family members were potentially subjected to the horrors of factory work. Reformers feared that child labor could decrease the future labor pool through loss of limb or life, that male child workers would not attend school causing an illiterate electorate, and that women would bear fewer, less healthy children. Across the nation, reformers attempted to protect vulnerable workers with laws that bettered work conditions, especially those that decreased hours of work.[19]

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[18] At the turn of the century, industrialists emphasized hard work as necessary for economic success. Men like Andrew Carnegie emphasized that success was best achieved through drive and initiative. Carnegie emphasized that men should take responsibility for their own successes and not depend on the wealth of others. He encouraged other industrialists to engage in charity for fear of spoiling their dependents and making their sons irresponsible. Andrew Carnegie, "Wealth," *North American Review* (June 1889).

[19] On child labor, see Anthony Platt, *The Child Savers: the Invention of Delinquency* (Chicago: University of Chicago Press, 1969).

Courts generally affirmed maximum workday laws for women and children and invalidated laws for men unless they were engaged in dangerous occupations.[20] Women and children did not have the power to affect legislation through voting, so the judiciary saw them as less powerful than male voters. Nineteenth-century common law doctrines dictated that married women were not equally able to make contracts and assume the risks of wage work. At the *fin de siècle*, judiciaries determined the validity of a host of protective laws for women and children. Scholars look to the decision in *Muller v. Oregon* (1908) as the defining moment in federal courtrooms.[21] In *Muller*, United States Supreme Court justices ruled that women were a dependent class of workers in need of protection, basing their decision on the premise that women were not free to assume the same work risks as men because of actual or prospective motherhood. The judiciary refused to extend the 14th amendment ban on legislative interference to women and children This decision had important implications for women workers, as it enshrined their dependence, placed them under state control, and restricted self-rule.

[20] Victoria Hattam and William Forbath argue that judicial butchering of labor legislation was not the result of opposition to labor or favoritism to capital, but part of the evolving role of the judiciary in relation to the legislature. Victoria Hattam, *Labor Visions and State Power: the Origins of Business Unionism in the United States* (Princeton: Princeton University Press,1993); William Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge: Harvard University Press, 1991).

[21] *Muller v. Oregon*, 208 U.S. 416 (1908). Reactions to the ruling were mixed. Reformers celebrated the decision as a victory with little regard to the fact that the court had implied that women were biologically inferior to men. Equal rights feminists were upset over the ruling. They noted that total equality would never be achieved as long as women workers were viewed as a separate, inferior class of citizens. For a good discussion of the tensions between reformers and feminists, see Nancy Woloch, *Muller v. Oregon: A Brief History with Documents* (Boston: St. Martin's Press, 1996).

Scholars of protectionism have emphasized women and children at the expense of men.[22] But union men also tried to use protective labor legislation to exert control over their lives. Since the judiciary deemed men capable of assuming risk, historians often suppose that they eschewed protectionism for fear that they would lose autonomy.[23] In 1886, the court gave authority to this idea with their decision in *Godcharles v. Wigeman* that implied protective labor legislation was "degrading to manhood."[24] In 1909, however, legal scholar Roscoe Pound argued that the courts erred by calling "legislation designed to give laborers some measure of practical independence, which…would put them in a position of reasonable equality with their

[22] On protectionism, see Susan Lehrer, *Origins of Protective Labor Legislation for Women, 1905-1925* (Albany: State University of New York Press, 1987); Judith Baer, *The Chains of Protection: the Judicial Response to Women's Labor Legislation* (Westport: Greenwood Press, 1978); Julie Novkov, *Constituting Workers, Protecting Women: Gender, Law, and Labor in the Progressive and New Deal Years* (Ann Arbor: University of Michigan Press, 2001); Vivien Hart, *Bound by Our Constitution: Women, Workers, and the Minimum Wage* (Princeton: Princeton University Press, 1994); and Woloch, *Muller v. Oregon*. In the states, however, Melvin Urofsky contends that protective legislation for all sexes found greater approval, see Melvin Urofsky, "State Courts and Protective Legislation during the Progressive Era: A Revolution," *Journal of American History* 72 (1985), 64-91.

[23] Judith Baer asserts that union men "felt themselves competent to protect their own interests…they tended to prefer collective bargaining to legislation as a means of reform." Baer, *Chains of Protection*, 30. Since most protectionist legal and social welfare historians study protective labor legislation for women, protective labor legislation for men is virtually left out of the narrative. Part of the reason that male unionists may have been ignored is that protectionist scholars (Baer, Lehrer, and Woloch) use evidence for their arguments from Samuel Gompers and the American Federation of Labor in the early 1900s; a time when AFL strategies kept changing, see for example, Julie Greene, *Pure and Simple Politics: The American Federation of Labor and Political Activism, 1881-1917* (New York: Cambridge University Press, 1998). Greene shows that the American Federation of Labor was indeed in flux from 1906 through the 1910s, so arguments by Gompers regarding protective labor legislation in the early 1900s do not necessarily represent the views of unionists in the late 19th century and certainly do not speak for the Knights of Labor.

[24] *Godcharles v. Wigeman*, 113 Pa. 41 (1886).

masters" offensive to their manhood.[25] Men indeed did not want states to control their prospects, because it meant they lost self-determination. Union workers, however, found a way to use protective labor legislation without sacrificing their independence.

Since workers did not sit equally at the bargaining table with employers, they attempted to use protective labor legislation to assert control over industrial relations. Through labor organizations, men influenced legislation that would help them to advance economic and safety goals. Unions created legislative agendas and elected labor representatives to Congress. Many labor activists saw protective laws as a means to force employers to better the conditions of work. By arguing for specifics like union recognition, hours regulation, wage rules, workmen's liens, reversal of labor conspiracy laws, and anti-injunction legislation, protection-seeking men affirmed their manhood by enhancing their power in labor/management relations.[26]

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[25] Roscoe Pound, "Liberty to Contract," *The Yale Law Journal* 18 (May 1909), 454-487, 463.

[26] By allowing laborers more control over their lives, protective laws were the working man's friend to achieve liberty and assert their manhood. Since self-ownership and breadwinning defined masculinity, protective labor legislation allowed men to be manly by empowering them to assert control over their hours of labor, wages, work conditions, and union activity. Gail Bederman, Michael Kimmel, Kevin Murphy, and E. Anthony Rotundo write important works about manhood in the Gilded Age and Progressive era. Bederman asserts that the definition of manhood depends on time, place, and context and Kimmel argues that market forces after the Civil War caused instability in the definition of manhood and that it had to be proved; he terms this "self-made men." Rotundo contends that by the late 19th century, individual achievement replaced communal status as the proper standard of masculinity. While Murphy adds that middle-class and elite male reformers at the turn of the century believed that laboring men possessed manly virtues that privileged men lost due to the feminizing effects of society life. Gail Bederman, *Manliness and Civilization: a Cultural History of Gender and Race in the United States, 1880-1917* (Chicago: University of Chicago Press, 1995); Michael Kimmel, *Manhood in America: a Cultural History* (New York: Free Press, 1996); E. Anthony Rotundo, *American Manhood: Transformations in Masculinity from the Revolution to the Modern Era* (New York: Basic Books, 1993); Kevin Murphy, *Political Manhood: Red Bloods, Mollycoddles, and the Politics of Progressive Era Reform* (New York: Columbia University Press, 2008).

Workers in Courtrooms

In the Gilded Age, American jurists built a legal structure that protected property rights, avoided governmental intervention in commerce, and constrained the rights of unionists and laborers.[27] As Melvin Urofsky and Paul Finkelman explain, the constitutional structure rested on two pillars to prevent legislative interference with private business: freedom of contract and

[27] The literature on capitalism and American law is robust. For a good overview of capitalism and law, see Kermit Hall, *The Magic Mirror: Law in American History* (New York: Oxford University Press, 1989) and Tony Freyer, "A Legal Innovation and Market Capitalism, 1790-1920," in *The Long Nineteenth Century: Cambridge Histories*, ed. Michael Grossberg and Christopher Tomlins (Cambridge: Cambridge University Press, 2008), 449-482. Robert McCloskey provided interesting commentary on capitalism and the law through his study of Andrew Carnegie, William Graham Sumner, and Stephen J. Field. He argued that after the Civil War the democratic tradition in American society started to deteriorate—centrality of property rights reigned supreme and gave way to the excesses of the Gilded Age. Robert McCloskey, *American Conservatism in the Age of Enterprise* (Cambridge: Harvard University Press, 1951). Morton Keller revises the idea that the government's sole objective was to make sure that industrialism reigned. Keller shows that in the late 19th century the doctrine of laissez-faire did not go unchallenged, but that by the end of the century the relationship between state and society was still not firmly established. Morton Keller, *Affairs of the State: Public Life in Late Nineteenth Century America* (Cambridge: Harvard University Press, 1977). On bureaucracy during the Gilded and Progressives ages, see Robert Wiebe, *The Search for Order, 1877-1920* (New York: Hill and Wang, 1967). Legal scholars James Willard Hurst and Morton Horwitz debated the intent of the court when ruling on cases regarding economic distribution of wealth, but agreed that generally the courts promoted industry. Hurst, a student of the early 19th century began a discussion of the relation between capitalism and law—democracy prevailed. James Willard Hurst, *Law and Social Order in the United States* (Ithaca: Cornell University Press, 1977). In two volumes, Horwitz studied capitalism and law before and after the Civil War. Courts sought to redistribute wealth from the planter class to the industrial class, which later led to a judicial promotion of industrial interests to the detriment of weaker groups. Morton Horwitz, *The Transformation of American Law, 1870-1960: the Crisis of Legal Orthodoxy* (New York: Oxford University Press, 1992). Peter Karsten found that the judiciary was not as ruthless in their decisions as Horwitz claims; he maintains that underlying judicial decisions was an attempt by judges to be fair and equitable. Peter Karsten, *Heart Versus Head* (Chapel Hill: University of North Carolina Press, 1997). A defining work on legal classicism is William Wiecek, *The Lost World of Classical Legal Though: Law and Ideology in America, 1886-1937* (New York: Oxford University Press, 1998). In Wiecek's view, legal formalism provided an answer to the social problems of the 1870s and 1880s. Judges attempted to restrain state lawmakers who could undermine capitalism through regulations.

substantive due process.[28] Unlike procedural due process, which ensured that the rule of law was followed exactly and uniformly, substantive due process changed the game by giving natural rights the same constitutional protection as enumerated ones. Substantive due process protected American citizens from overreaching regulatory legislation and came to be the court's main defense of property rights. In 1883, Thomas Cooley, a nationally respected Michigan judge, listed liberty to make contracts as one of five natural rights.[29] The United States Supreme Court, by 1897, identified liberty of contract with substantive due process in *Allgeyer v. Louisiana*.[30] Although scholars point to the *Allgeyer* case as a defining moment in jurisprudential change, however, Michigan Supreme Court justices had made crucial decisions regarding contractual rights nearly a decade earlier. In *Kuhn v. Common Council of Detroit*, the Michigan Supreme Court decided that the right to contract a debt or other personal obligation was included in the right to liberty and was also a right of property.[31]

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[28] Melvin Urofsky and Paul Finkelman, *A March of Liberty: A Constitutional History of the United States*, vol. 2 (New York: Oxford University Press, 2002), 504-511.

[29] Thomas McIntyre Cooley, *Treatise on the Constitutional Limitations which Rest Upon the Legislative Power of the States of the American Union* (Boston: Little and Brown, 1883). The other four natural rights were: right to life, right to liberty, right to marry, and the right to acquire property. For secondary work on Cooley's life and legal impact, see Jerome C. Knowlton, "Thomas McIntyre Cooley," *Michigan Law Review* 5 (March 1907), 309-325. Also see Robert Olender, "A Legacy of Limitation: Thomas M. Cooley, Public Purpose, and the General Welfare," *Michigan Historical Review* 33 (March 2007), 1-26.

[30] *Allgeyer v. Louisiana*, 165 U.S. 578 (1897). Edward Keynes examines substantive due process in *Liberty, Property, and Privacy: Toward a Jurisprudence of Substantive Due Process* (University Park: Pennsylvania State University Press, 1996). A New York court set the precedent for substantive due process by striking down a law to regulate the liquor business in *Wynehamer v. People*, 13 N.Y. 378 (1856).

[31] *Kuhn v. Common Council of Detroit*, 70 Mich. 534 (1888).

After the 1880s, state and federal laws supplanted local regulation; entrepreneurial citizens vigorously claimed rights to property and its use through the 14th amendment. By the 1890s, the federal judiciary justified governmental intervention in the marketplace when it served the public good. Judges attempted to remain free from capitalist coercion and were deeply concerned with the fairness of their rulings, as Peter Karsten explains, a "jurisprudence of the heart" mattered as much as a "jurisprudence of the head."[32] Courts generally upheld the welfare of the people when deciding cases regarding private rights.[33] By the turn of the century, however, state legislatures exercised police powers vigorously to ensure that private rights were subject to the rights of the whole.

The purpose of contract law was not to ensure equity but to lay out the terms of the bargain, which left employees vulnerable as workers could not enter into contracts on a fair and equitable basis.[34] It was a legal fiction to assume the independence of the working class, yet the judiciary decided 'liberty of contract' cases on the usual basis of legal equality. In Justice

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[32] Peter Karsten argues that changes occurred over the 19th century from a judiciary that strictly adhered to precedent to one that by the time of industrialization was more likely to alter rules when they were unfair. Karsten shows that "the poor, the weak, common laborers, and children were better off under the rules of the common law and equity by the 1890s than they had been in the 1790s because of judicial innovations." Karsten, *Heart Versus Head*, 294. Karsten responds to the debate of James Willard Hurst and Morton Horwitz over the extent to which justices fashioned the capitalist legal system. See Hurst, *Law and Social Order* (Ithaca: Cornell University Press, 1977) and Horwitz, *The Transformation of American Law, 1870-1960* (New York: Oxford University Press, 1992).

[33] William Novak argues that by the 1880s demands for individual rights, fewer regulated markets, and care for the welfare of the people guided lawmakers in *The People's Welfare: Law and Regulation in 19th century America* (Chapel Hill: University of North Carolina Press, 1996).

[34] William Wiecek, *The Lost World of Classical Legal Thought: Law and Ideology in America, 1880-1960* (New York: Oxford University Press, 1998). Wiecek argues that jurists built a constitutional structure that emphasized freedom of contract, but acknowledges that classical legal principles never reflected the reality of labor relations.

Bradley's dissent in the *Slaughterhouse* cases, which involved male workers, he spoke strongly of the rights of citizens to pursue their occupations.[35] The Supreme Court made clear in *Bradwell v. Illinois* (1873), however, that the right to contract one's labor freely and pursue any vocation was a male privilege.[36] The *Bradwell* decision put women's work in the home and implied that men's work occurred beyond the private realm. Judicial decisions that enforced men's independence caused problems for working-class men; the premise belied the social reality of working-class dependence. In 1909, Roscoe Pound argued that judges did not understand the relationship between workers and liberty to contract: "[W]e must first of all recognize that there never has been at common law any such freedom of contract as they postulate."[37] Laws built on liberty of contract actually increased the dependency of working men.

For the majority of the nineteenth century, property law and self-ownership dominated judicial discussions.[38] The courts attempted to protect the rights of white, male laborers to contract their labor. Assumptions about gender, man's right to contract, and the sanctity of

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[35] *Slaughterhouse Cases*, 83 U.S. 36 (1873).

[36] *Bradwell v. Illinois*, 83 U.S. 130 (1873). For a discussion of how the judiciary decided *Slaughterhouse* in light of the *Bradwell* case, see Sandra VanBurkleo, *'Belonging to the World': Women's Rights and American Constitutional Culture* (New York: Oxford University Press, 2001). Jonathan Lurie and Ronald Labbe omit the *Bradwell* case in their discussion of the Slaughterhouse cases. Ronald Labbe and Jonathan Lurie, *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment* (Lawrence: University Press of Kansas, 2003).

[37] Roscoe Pound, "Liberty to Contract," *The Yale Law Journal* 18 (May 1909), 482.

[38] Barbara Welke draws interesting conclusions about the relation between personhood and property law. Barbara Welke, "Law, Personhood, and Citizenship in the Long Nineteenth Century: the Borders of Belonging," in *The Long Nineteenth Century: Cambridge Histories*, ed. Michael Grossberg and Christopher Tomlins (New York: Cambridge University Press, 2008), 345-386. Also, see Hendrik Hartog, *Public Property and Private Power* (Chapel Hill: University of North Carolina Press, 1983).

property undergirded *In re Jacobs* (1885), in which the New York Supreme Court struck down a New York City law prohibiting cigar making in tenements.[39] Disregarding arguments that cigar-making in enclosed areas was detrimental to the public welfare, including the families of the cigar-makers, the judges maintained a man's right to pursue his vocational choice. The *Jacobs* decision characterized that labor as masculine, invalidating a protective law that protected women and children in order to defend male worker's liberty to contract.[40]

White, working-class men found themselves in a dilemma: whereas men were free to assume the risks of the workplace, they were not empowered to negotiate the terms of work. A laborer was not free when he could not make critical decisions about conditions of work, time spent with family, or where wages were spent. To redress the imbalance of bargaining power, many workers joined unions that sought protective labor legislation.[41] In the nineteenth century, numerous states enacted laws that curtailed workers' organization. In 1867, Michigan legislators prohibited disturbing laborers in the course of their work. The law made any person molesting or disturbing a laborer "in the quiet and peaceable pursuit of his lawful avocation" guilty of a misdemeanor and subject to a fine or jail time.[42] This law was probably the first in Michigan to herald an approaching labor problem even though it came before meaningful union organization

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[39] *In re Jacobs*, 98 N.Y. 98 (1885).

[40] Eileen Boris explains, "Jacobs had narrowed the meaning of the police power of the state by proclaiming men's right to community protection; men's freedom to contract justified women's necessity to labor at home." Eileen Boris, "A Man's Dwelling House is His Castle: Tenement House Cigarmaking and the Judicial Imperative," in *Work Engendered: Toward a New History of American Labor*, ed. Ava Baron (Ithaca: Cornell University Press, 1991), 114-141.

[41] Two seminal pieces about labor unions and the law are Christopher Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880-1960* (New York: Cambridge University Press, 1985) and William Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge: Harvard University Press, 1991).

[42] *Public Acts of Mich*igan, 1867, no. 163.

in Michigan. In 1877, the legislature prohibited any person from obstructing the regular operation and conduct of the business of railroads or other companies.[43]

After adoption of the Sherman Act in 1890, labor injunctions were a powerful tool for employers who wanted to curtail strikes.[44] The *Debs* case affirmed the constitutionality of the labor injunction in 1895. In the midst of the 1894 Pullman Strike, a federal injunction ordered the striking workers of the American Railway Union and their leader, Eugene Debs, to go back to work. Debs refused to end the strike and was jailed. He appealed the decision to the United States Supreme Court. The Court ruled that they would not validate labor union activities if such actions restrained industry.[45] Justice Brewer protected judge-made law, the labor injunction, as a form of relief to companies. Although workers attempted to fight back against employer-friendly courts, they also faced opposition from employers' anti-union organizations, such as the Employers' Association of Detroit.[46] Unions steadily became more politicized to combat the overwhelming strength of employers.[47]

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[43] *Public Acts of Michigan.*, 1877, no. 11. The Baker conspiracy act, as it was called, preceded the national mass work stoppages on the railroads.

[44] The Sherman Anti-Trust Act prohibited activities restricting interstate commerce and competition in the marketplace. Sherman Antitrust Act, 15 U.S.C. §§ 1-7 .

[45] *In re Debs*, 158 U.S. 564 (1895).

[46] For a discussion of injunctive law in Michigan, see Jake Hall, "Anti-Injunction Campaigns and the Transformation of Labor Law in Detroit, 1915-1921," *Michigan Historical Review* 36 (Spring 2010), 1-30. Hall explores how Detroit labor leaders worked to reform, restrict, and prohibit the use of the labor injunction and shows how the Michigan judiciary used blanket injunctions to curb organized labor's power.

[47] Julie Greene discusses the growing political activism of the American Federation of Labor from the 1880s through the 1910s. Julie Greene, *Pure and Simple Politics* (New York: Cambridge University Press, 1998). The increasing politicization of labor unions had a negative effect on female unionists. Bureaucratization of unions, as Elizabeth Faue explains, pushed women to the margins of the labor movement. Faue shows how the Minneapolis labor movement emphasized woman as worker and wife, while visually linking work and the male

Employers and laborers disagreed hotly about wage payment frequency, amount of pay, and type of pay. Workers sought laws governing minimum wages, payment in cash, and frequency of pay. Some of the earliest efforts to protect workers involved method of payment. Workers wanted to be paid in currency in order to choose how, where, and when to spend their money. In 1886, the Pennsylvania Supreme Court struck down a law to end scrip payment as an infringement of both the rights of the employer and the employee.[48] By the 1890s, state lawmakers reversed course. In 1897, Michigan legislators prohibited employers from paying employees in wages other than cash and avoided constitutional challenge.[49]

Wage laws for women were justified differently. Working wives' situations were especially difficult. Whereas men did not risk losing control of their wages and self-ownership to their spouse through marriage, women did.[50] Throughout much of American history, the law

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worker. As unions became more bureaucratized, there was less need for female activism at the local, grass-roots level. Elizabeth Faue, *Community of Suffering and Struggle: Women, Men, and the Labor Movement in Minneapolis, 1915-1945* (Chapel Hill: University of North Carolina Press, 1991). Scholars have questioned the role of gender in the structure of unions and pondered how labor unions reinforced or challenged gender inequality. See also Nancy Hewitt, "The Voice of Virile Labor: Labor Militancy, Community Solidarity, and Gender Identity among Tampa's Latin Workers, 1880-1921," in *Work Engendered*, ed. Ava Baron, 142-167 (Ithaca: Cornell University Press, 1991) and Patricia Cooper, "The Faces of Gender: Sex Segregation and Work Relations at Philco, 1928-1938," in *Work Engendered*, ed. Ava Baron, 320-350.

[48] *Godcharles & Co. v. Wigeman*, 113 Pa. 431 (1886). The court maintained that the law was "an insulting attempt to put the laborer under a legislative tutelage which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States."

[49] *Public Acts of Michigan*, 1897, no. 221, 278-279.

[50] For loss of women's rights in marriage, see Nancy Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge: Harvard University Press, 2000) and Sandra F. VanBurkleo, *Belonging to the World*. For men and women's rights within marriage, see Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth Century America* (Chapel Hill: University of North Carolina Press, 1985) and Hendrik Hartog, *Man & Wife in America: A History* (Cambridge: Harvard University Press, 2000). For married women's property reform, see Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth Century New York* (Ithaca: Cornell University Press, 1982).

nullified the separate legal existence of married women; men held the property right in their wives' labor. In Michigan, a married woman's wages were hers to keep only as a gift or with the consent of her husband.[51] Furthermore, the Michigan Supreme Court held that married women had no general capacity to make contracts.[52] Husbands were prohibited from forcing their wives to do more work than they were capable of performing; to do so was as the court said, "extreme cruelty."[53] Only in 1911 did married Michigan women secure full control over their wages.[54] These decisions reinforced the masculinity of work, the dominance of the husband within the home, and the man's position as breadwinner. Salaried work for women formed an exception to a general rule of masculinity. The masculine breadwinner norm, as Michael Willrich explains, empowered "state agencies and local courts to police the behavior of workingmen."[55]

While employers paid lip service to the idea of paying men a "family wage," working men's pay was rarely enough to fully support their breadwinning role.[56] Although men stood on a higher rung of the employment ladder than women, both sexes encountered poor working conditions, inadequate wages, long workdays, and generally inhumane treatment. Finding little relief from substandard wage payments, workers fought to eliminate common-law defenses that prevented them from holding their employers liable for workplace injuries. Common-law

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[51] *Benson v. Morgan*, 50 Mich. 77 (1883).

[52] *Edwards v. McEnhill*, 51 Mich. 160 (1883).

[53] *DeZwaan v. DeZwaan*, 91 Mich. 279 (1892).

[54] *Public Acts of Michigan*, 1911, no. 196.

[55] Michael Willrich, "Home Slackers: Men, the State, and Welfare in Modern America," *The Journal of American History* 87 (September 2000), 463.

[56] On debates over the family wage, see Alice Kessler-Harris, *A Woman's Wage: Historical Meanings and Social Consequences* (Lexington: University Press of Kansas, 1990).

doctrines of fellow servant, negligence, and assumption of risk hindered those seeking compensation for workplace injury or death.[57] Throughout most of the nineteenth century, justices placed the burden of liability on laborers. In the 1890s, the law of nuisance and negligence started to shift in favor of the employee. By the 1910s, several states had instituted employer liability and workmen's compensation laws.[58] Reformers faced a set-back when the New York Court of Appeals struck down worker compensation legislation, *Ives v. South Buffalo Railway* (1911), but this invalidation gave legislators in other states cause to enact laws that could withstand constitutional challenge.[59] Michigan's employer liability and workmen's compensation law, however, did little to equalize the status quo between employers and employees; legislators eliminated liability for both workers and employees who paid into the workmen's compensation insurance program.[60]

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[57] On master/servant laws, see Christopher Tomlins, *Labor Law in America* (Baltimore: Johns Hopkins University Press, 1992) and Robert Steinfeld, *Coercion, Contract, and Free Labor in the 19th Century* (New York: Cambridge University Press, 2000). Both Tomlins and Steinfeld hold that wage labor tested the meaningfulness of the term "property rights." Each point out the irony of calling wage workers free labor while making them labor under rules derived from English "master/servant" law.

[58] On employee compensation and negligence, see John Fabian Witt, *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law* (Cambridge: Harvard University Press, 2004).

[59] *Ives v. South Buffalo Railway*, 201 N.Y. 271 (1911).

[60] *Public Acts of Michigan*, 1912, Special Session, no. 10, 21-40. Section one of this law stated that employers could not claim as a defense: employee negligence, fellow employee negligence, or assumption of risk. Section four mandated that employers were not to be subject "to any liability whatsoever" if they have elected to retain compensation insurance.

In the midst of industrial change and turmoil, Americans battled over maximum hours for a work day.[61] Capitalists maintained that hours laws allowed for too much governmental interference in the marketplace, while laborers held that shorter working days provided them with much needed time for moral and educational improvement. State and federal judiciaries sanctioned hours legislation for male laborers in dangerous employment, but generally invalidated hours laws for male workers as a whole. Although the California Supreme Court had invalidated an eight-hour day on Los Angeles public works in *Ex parte Kuback*, the United States Supreme Court later sanctioned hours laws for public employment in *Atkin v. Kansas*.[62] According to the justices, differences between private and public corporations justified limiting hours for public employees, but did not allow for governmental intervention in private companies.[63]

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[61] Robert Whaples asserts that the shorter-hours movement galvanized organized labor and sparked the first labor unions. Robert Whaples, "Winning the Eight Hour Day, 1909-1919," *The Journal of Economic History* 50 (June 1990), 393-406. For an overview of the shorter hours movement, see David Roediger and Philip Foner, *Our Own Time: A History of American Labor and the Working Day* (New York: Greenwood Press, 1989). On leisure activities and shorter working days, see Roy Rosenzweig, *Eight Hours For What We Will: Workers and Leisure in an Industrial City, 1870-1920* (New York: Cambridge University Press, 1983). The fight for shorter working days for men was contentious. The judiciary did not uniformly affirm hours laws for men. Melvin Urofsky argues that the situation was not as dire as one may think for workers seeking legislative protection, but acknowledges that hours laws were generally only upheld for men who worked in municipal employment or dangerous occupations. Melvin Urofsky, "State Courts and Protective Legislation during the Progressive Era: A Revolution," *Journal of American History* 72 (1985), 64-91.

[62] *Ex parte Kuback*, 85 Cal. 274 (1890*)*. Justices in *Ex parte Kuback* cited Thomas Cooley's constitutional limitations on police powers as rationale for their decision. *Atkin v. Kansas*, 191 U.S. 207 (1903).

[63] In *O'Boyle v. City of Detroit*, 131 Mich. 15 (1902), the Michigan Supreme Court found similarly to the *Atkin* case. The Michigan court stated that O'Boyle had a right to overtime and that terms of the suit were substantially different than other cases regarding overtime pay.

As indicated earlier, courts were more likely to approve of hours legislation for men in dangerous employment than for men doing ordinary work.[64] In the 1880s, many states and municipalities successfully drafted laws that limited working hours for men. Although Michigan enacted a ten-hour workday, in 1885, a clause which allowed parties to contract for longer hours curbed its effectiveness.[65] In 1894, a Nebraska court struck down hours legislation arguing that an eight-hour day for workers constituted class legislation and violated liberty of contract.[66] Judiciaries were adverse to interfering with private labor contracts unless there was an undeniable threat to the public welfare present. State legislatures therefore revised hours statutes to apply to industries known for dangerous employment.[67] In 1898, labor activists saw a glimmer of hope when the United States Supreme Court acknowledged that employees and their employers were unequal in power, stating in *Holden v. Hardy* that the state could use its police power to protect the welfare of its workers.[68] But the *Holden* decision protected workers only in dangerous professions. Finally, in *Lochner v. New York* (1905), the United States Supreme Court reinforced shorter workdays for men in dangerous employment when they invalidated hours legislation for male bakers. A state could only limit work contracts to promote the health,

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[64] Scholars debate the extent to which *Lochner* was a drastic change in jurisprudence. For a thorough discussion of hours laws and the courts, see Paul Kens, *Judicial Power and Reform Politics: The Anatomy of Lochner v. New York* (Lawrence: University Press of Kansas, 1990) and Howard Gillman, *The Constitution Besieged: The Rise and Demise of Lochner Era Police Powers Jurisprudence* (Durham: Duke University Press, 1993), which contends that *Lochner* simply articulated a theory of liberty embedded in all of American jurisprudence.

[65] *Public Acts of Michigan*, 1885, no. 137, 154-155.

[66] *Low v. Rees Printing Co*., 41 Neb. 127 (1894).

[67] For example, *Public Acts of Michigan*, 1893, no. 177, 276, where Michigan passed a ten-hour day for railroad employees.

[68] *Holden v. Hardy*, 169 U.S. 366 (1898). To do this, they ignored briefs outlining the dangers inherent in hot, dusty bakeries.

safety, or morals of the larger community or to protect workers who had assumed more risk than they could reasonably evaluate.[69]

Gender, Labor, and the Progressive State

A worker's sex played a crucial role in the creation and administration of protective labor legislation. As Ava Baron asserts, "Workingmen's understandings of gender structured their relations with others, grounded their views of market and skill, and shaped the ways they dealt with issues of wages and workers' control."[70] In order to protect property rights, the judiciary erred on the side of caution when supporting laws regarding protection for male workers. Protective labor legislation generally addressed either child labor, maximum hours for men in dangerous employment, female labor, safety, or methods of wage payment.

Labor unionists, social reformers, and policy makers alike embraced child labor laws.[71] Not a single state invalidated child labor regulations. In *State v. Shorey* (1906), the Oregon court upheld a child labor law stating, "It is competent for the state to forbid the employment of children in certain callings merely because it believes such prohibition to be for their best interest…such legislation is not an unlawful interference with the parents' control over the child."[72] Like other state legislatures, Michigan regulated the employment of children by limiting their hours, prohibiting work in certain trades, mandating minimum ages, and requiring

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[69] *Lochner v. New York*, 198 U.S. 45 (1905).

[70] Ava Baron, "Gender and Labor History: Learning from the Past, Looking to the Future" in *Work Engendered*, ed. Baron (Ithaca: Cornell University Press, 1991), 39.

[71] For a broad account of child labor reform and the law, see Walter Trattner, *Crusade for Children: A History of the National Child Labor Committee and Child Labor Reform in America* (Chicago: Quadrangle Books, 1970).

[72] *State v. Shorey*, 48 Ore. 396 (1906).

educational achievements.[73] Child labor laws differed for boys and girls, especially in type of work allowed and length of workdays.[74] Child labor legislation, in turn, reflected a legal shift towards an enhanced role of courts in family law.[75] By the end of the nineteenth century, judges determined divorce and child custody cases. Additionally, judges increasingly decided matters of parenting by enforcing truancy and compulsory education laws.

Federal courts generally favored legislation governing women's bodies and work.[76] Since the United States Supreme Court had ruled in the *Bradwell* case that the 14th amendment did not

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[73] *Public Acts of Michigan*, 1883, no. 144, 149-150 required compulsory education before work. *Public Acts of Michigan*, 1885, no. 39, 37-38 regulated numerous aspects of child labor.

[74] *Public Acts of Michigan*, 1887, no. 152, 164 limited the hours of labor for children, but indicated a different minimum age for boys (14) than girls (16).

[75] On the changing legal conception of family and its relation to the state, see Grossberg, *Governing the Hearth* (1985). Additionally, Laura Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Urbana: University of Illinois Press, 1997) shows how the role of husband and father elevated a man civically. Judicial patriarchy eroded the traditional rights of patriarchy for working men. For a discussion of how jurists debated the dynamics of sex and paternalism in the south before and after the Civil War, see Peter Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth Century South* (Chapel Hill: University of North Carolina Press, 1995). Hendrik Hartog shows how married couples turned to the courts increasingly by the late 19th century to help them order their marital affairs. Hendrik Hartog, *Man and Wife in America: A History* (Cambridge: Harvard University Press, 2000).

[76] Sandra VanBurkleo provides an excellent overview of the numerous state and federal rulings that affected women workers in *'Belonging to the World'* (2001), 210-238. For a comprehensive study of protective labor legislation for women, see Susan Lehrer, *Origins of Protective Labor Legislation for Women, 1905-1925* (Albany: State University of New York Press, 1987). Lehrer states that to understand woman's relationship to the state one must understand the function female workers traditionally played in capitalist society. She argues that "protective labor legislation was one facet of a general trend toward the rationalization of the labor process." (19) Other scholars also enrich the discussion of women and protective labor legislation. For maternalist social policy, see Theda Skocpol, *Protecting Soldiers and Mothers: the Political Origins of Social Policy in the United State*s (Cambridge: Harvard University Press, 1992). For a comparative study of protective labor legislation, see Ulla Wikander, Alice Kessler-Harris, and Jane Lewis, editors, *Protecting Women: Labor Legislation in Europe, the United States, and Australia* (Urbana: University of Illinois Press, 1995).

give women equal opportunity to pursue their chosen vocations, they approved separate treatment of women workers.[77] Judges generally persisted in viewing women, particularly wives, as disabled or vulnerable citizens. State lawmakers regulated women's work to protect them from danger and vice, further segregating the sexes. In Michigan, lawmakers enacted maximum workday laws for women and children, regulated safety measures of factories that employed women and children, compelled employers to provide seats and water closets for women, and prohibited women from certain aspects of employment.[78] These laws implied that women were a faulty or needy class of workers, while portraying men as whole, independent laborers.

The first substantial court ruling on protective labor legislation for women occurred in Massachusetts in 1874.[79] The Massachusetts legislature had enacted a ten-hour maximum workday for female workers, which the state's high court affirmed as constitutional. Illinois high court justices struck down an eight-hour law for women workers stating that it was overreaching the police power because it did not directly advance the public welfare.[80] The law discriminated against women and denied them liberty to contract. The *Ritchie* decision, however, met vigorous

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[77] *Bradwell v. Illinois*, 83 U.S. 130 (1873).

[78] *Public Acts of Michigan*, 1885, no. 39, 37-38 created a ten-hour day for women and children. Act no. 265 of 1889 regulated safety of workplaces that employed women and children; aspects of this law governed issues of modesty such as calling for screening on stairwells. Act 91 of 1893 required seats for women. Act 184 of 1895 required separate water closets for women. Act 170 of 1897 prohibited women from bartending. Act 172 of 1905 forbade women to operate belts or wheels. Act 169 of 1907 stated that women could not be employed where life or limb was endangered or health injured or morals depraved. Act 285 of 1909 reduced the hours of labor for women to nine hours per day.

[79] *Commonwealth v. Hamilton Manufacturing Co.*, 120 Mass. 383 (1874).

[80] *Ritchie v. People*, 155 Ill. 106 (1895).

dissent from reformers. Florence Kelley, Josephine Goldmark, and others immediately set to work devising a broad campaign to protect women against long hours of work. Their work culminated most famously in the *Muller* decision.[81] Affirming that state legislators possessed the power to limit women's hours of work, the judiciary took this information to mean that women were an inherently different and inferior class of workers from men due to their peculiar physical structure and reproductive capabilities. The case exemplified the decisive role that workers' sex played in judicial decision-making. It also influenced justices in *Withey v. Bloem*, a suit brought by Michigan women workers in 1910 to enjoin factory inspectors against the enforcement of Michigan's nine-hour law.[82] Michigan justices too affirmed hours of labor restrictions on women.

The judiciary thus allowed sex discrimination through endorsement of protectionist laws for women and children—that is, by embracing an exception to a general ban on legislative interference with liberty of contract. Although generally well-intentioned, federal and state judiciaries affirmed protective laws for women.[83] The debate over protective labor legislation began as a contest over the exercise of a state's police power, but developed into a discussion of women workers as a separate class. State courts were more apt to uphold protective labor legislation when it was limited to women. In Julie Novkov's study of protective labor legislation,

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[81] *Muller v. Oregon*, 208 U.S. 412 (1908).

[82] *Withey v. Bloem*, 163 Mich. 419 (1910).

[83] For a critique of protective labor legislation and the judicial perpetuation of gender inequality, see Judith Baer, *The Chains of Protection: the Judicial Response to Women's Labor Legislation* (Westport: Greenwood Press, 1978). Baer explores the tension between protection and restriction. She finds that, overall, protective labor laws were helpful for women, but she maintains that the courts upheld the laws for the wrong reasons.

she found that state courts invalidated protective legislation in 50% of the cases heard, whereas they upheld protective legislation involving women 83% of the time.[84]

Gender and law interacted even more constantly when policy makers debated minimum wage legislation.[85] Low wages prevailed in both unskilled and skilled occupations. Poor pay prevented healthy family development and contributed to social problems such as child labor, prostitution, and alcoholism. Michigan first considered minimum wages for women. In 1913, the legislature created a commission to investigate the question, but no legislation resulted.[86] Meanwhile, across the nation, various states tested minimum wage laws. The constitutionality of these laws was left in limbo after the United States Supreme Court split 4-4 over an Oregon women's minimum wage law in *Stettler v. O'Hara* (1917).[87] When the high court, in 1923, sat on another minimum wage case, *Adkins v. Children's Hospital*, they finally maintained that since women were enfranchised they no longer needed special protection.[88]

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[84] Julie Novkov, *Constituting Workers, Protecting Women: Gender, Law, and Labor in the Progressive and New Deal Years* (Ann Arbor: University of Michigan Press, 2001), 30.

[85] On minimum wage legislation, see Novkov, *Constituting Workers, Protecting Women* and Vivien Hart, *Bound by Our Constitution: Women, Workers, and the Minimum Wage* (Princeton: Princeton University Press, 1994). Hart argues that since the Constitution limited arguments about wage regulation that would contradict freedom to contract, proponents of wage legislation turned to gender.

[86] *Public Acts of Michigan*, 1913, no. 290, 551-552.

[87] *Stettler v. O'Hara*, 243 U.S. 629 (1917).

[88] *Adkins v. Children's Hospital*, 261 U.S. 525 (1923). In Holmes' dissent, he argued that laissez-faire economic theories underlay the ruling, not increased regard for women. During the New Deal era, in the *West Coast Hotel* decision, the United States Supreme Court approved minimum wage legislation for women. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). Two weeks after the *West Coast Hotel* case the Court sustained the National Labor Relations Act; they later affirmed the Fair Labor Standards Act of 1938.

Studies of state laws and courts have revitalized discussions of protective labor legislation. As Elizabeth Faue reminds us, "local and state laws were more important than federal ones in determining the outcome of strikes and the efficacy of protective labor laws." Melvin Urofsky's seminal piece on state courts and protective labor legislation also illustrates the importance of state-level protective labor laws and cases.[89] More workers stood before the bar of local or state courts than federal ones. For this reason, state cases are extraordinarily important to a full understanding of the legal culture of the time.[90]

This dissertation, then, is not just a history of Michigan men and the law; it is a study of the role of gender in protective labor legislation and reveals how and why Michiganians chose to create a sex-segregated industrial system. It describes men's struggle for legislative protection through their unions—a phenomenon at odds with prevailing emphases on socially dependent classes. Although Judith Baer notes in her study of protectionism that "up to 1890, the unions were the chief proponents of legislation," no one has undertaken a study of male unionists and protective labor legislation.[91] Legislative, judicial, and union choices made regarding protective

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[89] Elizabeth Faue, "Methods of Mysticism and the Industrial Order: Labor Law in Michigan, 1868-1940," in *History of Michigan Law*, ed. Paul Finkelman and Martin Hershock (Athens: Ohio University Press, 2006), 215. Melvin Urofsky, "State Courts and Protective Legislation during the Progressive Era: a Reevaluation," *Journal of American History* 72 (1985), 64-91.

[90] For more information on state courts, see Lawrence Friedman, *A History of American Law* (New York: Simon and Schuster, 1985). Friedman studies the role of courts in American history especially state trial courts. Michael Willrich explores the role of local courts in the Progressive era in *City of Courts: Socializing Justice in Progressive Era Chic*ago (New York: Cambridge University Press, 2003).

[91] Judith Baer argues that there were three ways to improve working conditions: technological changes, collective bargaining, or government intervention through legislation. She implies that collective bargaining and government intervention were exclusive, although she notes the importance of labor unions to legislation before 1890. Baer, *Chains of Protection*, 22. Susan Lehrer excludes male unionists from her study arguing that they "did their best to reinforce the subordinate position of women in the labor force through outright exclusion and "protective" legislation." But the fact that unionized men saw value in special legislation for women does not

labor legislation during the age of industrialization had lasting impacts on social and gender inequality.

This dissertation adds an examination of manhood and protective labor legislation to the historical narrative. The treatment of male workers in current studies of protectionism as the working norm, Ava Baron argues, "universalizes the male experience [and] results in a distorted historical understanding of men's actions."[92] Analysis of the 1885 Saginaw Valley Lumber Strike and the 1913 Calumet-Hecla Strike, as well as labor legislation, lawsuits, and the writings of workers and public officials, provides a counter narrative. White, male unionists plainly fought for workplace protection in Michigan from 1883 to 1913. The work shows how protective laws and the legal system framed the definition of manhood for many working-class men, and subsequently, shaped social constructions of femininity. It thus analyzes the role of gender in creating and validating protective labor legislation, explores how gender constructs informed male worker's decisions, and shows the role that masculinity played in workers' resistance to entrepreneurial power. It ultimately demonstrates how unionized working men embraced varieties of protectionism to gain greater control over their lives.

Organization

The dissertation progresses chronologically. For thematic continuity, however, the study departs from a strict timeline in chapters four and five. The first chapter looks at the 1885

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mean that they did not attempt to protect themselves. Lehrer, *Origins of Protective Labor Legislation*, 9. Protectionist scholars often focus on Progressives, see Judith Baer, *Chains of Protection*; Susan Lehrer, *Origins of Protective Labor Legislation*; Julie Novkov, *Constituting Workers, Protecting Women*; Vivien Hart, *Bound By Our Constitution*. When protective labor legislation for men is discussed, it is explored only in light of jurisprudence. For example, Melvin Urofsky looks at it as an argument that "freedom of contract never achieved a dominant position in American law." Urofsky, "State Courts and Protective Labor Legislation," 66.

[92] Ava Baron, "Gender and Labor History: Learning from the Past, Looking to the Future" in *Work Engendered*, ed. Baron (Ithaca: Cornell University Press, 1991), 29.

lumber strike in the Saginaw Valley and examines Michigan's ten-hour workday law. Backed by the Knights of Labor, Michigan workers fought for legislation that would limit their hours of labor to ten hours a day. In 1885, Michigan legislators enacted a ten-hour law, but a clause allowed employers and their workers to contract otherwise.[93] Lumber workers, upset that employers could evade the laws' intent, went on strike in the Saginaw Valley for a ten-hour day and steady payment of wages. The chapter also examines the effect that dependence had on lumber workers, as well as the role of gender in the resulting trials, where masculinity was as much on trial as were strike actions.[94]

Chapter two examines two cases, *Bartlett v. Street Railway of Grand Rapids* (1890) and *Schurr v. Savigny* (1891), to show the judicial response to workers' efforts to secure power.[95] In the 1890s, Frank Bartlett and Theodore Schurr separately tested Michigan's ten-hour law by bringing suit against their employers for failing to pay them over-time. In effect, Michigan Supreme Court justices legalized social understandings of manhood and shed light on the role that gender played in judicial outcomes. Chapter three discusses the limitations that workers faced when trying to assert independence, because of master/servant common law doctrine. Common law doctrines of negligence, assumption of risk, and fellow servant dictated that courts rarely found employers liable for workplace injuries. These doctrines presumed the independence of working men to contract freely, but placed little to no responsibility on the employer to provide a safe working environment. Through analysis of workmen's compensation

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[93] *Public Acts of Michigan*, 1885, no. 137, 154-155.

[94] *Webber v. Barry*, 66 Mich. 127, (1887).

[95] *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890) and *Schurr v. Savigny,* 85 Mich. 144 (1891).

cases, the chapter examines workers' beliefs about employer liability and shows industrial tensions over who should be held responsible for workplace accidents.

The fourth chapter looks at judicial commentary on lawful labor combinations. Often, employers reigned over their workers like feudal lords. Many working men in the factories organized to free themselves from the paternalistic yoke of their employers. Unionists hoped to better influence work rules through collective action, which was to replace one form of paternal power with another. After repeated protest from labor activists, Michigan legislators repealed the Baker conspiracy law. Through this repeal, workers gained an important weapon in their arsenal; laborers could actively strike, petition, and boycott without fear of reprisal. The judiciary, however, hampered union activity by approving an injunction in *Beck v. Railway Teamsters' Protective Union* (1898).[96] The chapter explores how the labor injunction was used in the bloody confrontation of miners and mine owners in Michigan's Copper Country in 1913. The miners did not have the power to protect themselves and their families and ultimately gave up trying to organize a chapter of the Western Federation of Miners.

Chapter five explores how gender difference affected workers' experiences before the bar. As industrialization limited white, working men's liberty, laws relating to gender became more important.[97] In 1909, Michigan passed a nine-hour law for women and children. Subsequently, Hattie Withey and women workers of International Seal and Lock Company fought to have the law declared unconstitutional; they were unsuccessful.[98] The chapter shows how male workers

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[96] *Beck v. Railway Teamsters' Protective Union*, 118 Mich. 497 (1898).

[97] Barbara Welke states that a man's independence was secured through family headship and property ownership. Welke, "Law, Personhood, and Citizenship," in *The Long Nineteenth Century* ed. Michael Grossberg and Christopher Tomlins (New York: Cambridge University Press, 2008), 345-386.

[98] *Withey v. Bloem*, 163 Mich. 419 (1910).

approved of state control over women for hours and wages, but saw this as distinctly different than the protection they were seeking. Protective labor legislation for women still allowed men to be in control. Union men did not oppose the nine-hour law for women, because it did not threaten their control and may have meant more work opportunities for men. The minimum wage law and nine-hour law for women workers that male laborers supported was self-protection. Minimum wages for women meant that they would be less likely to be employed in the place of striking men.

Chapter One

'And keep thee in bondage all the days of thy life'[1]

Workers Fight for Control Over the Workday

The courtroom grew silent as the jurors filed back into the room. They had deliberated for 23 hours to decide the fate of Thomas Barry, a Knights of Labor leader, Michigan state representative, and "fearless champion of the swindled laborers of Michigan."[2] In his 30s, with a "pleasing countenance" and a heavy red moustache, Thomas Barry was charged with conspiracy under the Baker act of 1877.[3] His involvement in the 1885 Saginaw Valley Strike by lumber workers for a ten-hour day brought him to the prosecutor's attention.[4] The jurors found in favor

[1] "A Strikers' Circular," July 16, 1885, box 30, Agnes Inglis Papers, Labadie Collection, University of Michigan.

[2] "Lansing Sympathizers Speak in No Uncertain Tone on the Subject," *Labor Leaf*, September 30, 1885.

Thomas Barry was born in upstate New York in 1852. He was a trained axe maker and worked in Cleveland until 1882 when he was fired for taking part in a strike. Barry moved to Saginaw where he made axes until he was elected to the state legislature in 1884. Barry was an active member of the Knights of Labor, until he was ousted from the group in 1888 after a long-standing feud with Terrance Powderly. Barry was not the only Michigan labor leader whose views conflicted with Powderly's, Joseph Labadie disagreed with Powderly's leadership of the Knights. In 1887, at a convention, a fight broke out between Labadie and Powderly. The tension between Barry and Powderly, as well as Labadie and Powderly may have contributed to the decline of the Knights in Michigan. Both Barry and Labadie were well-respected labor activists in Michigan. In 1889, Barry organized a new labor union, "Brotherhood of United Labor." The best account of Barry's life can be found in Maurice Ramsey, "The Knights of Labor in Michigan: 1878-1888" (master's thesis, Colleges of the City of Detroit, 1932).

[3] "Barry Not Guilty," Thomas Barry Scrapbooks, 1886-1890, Bentley Historical Library, University of Michigan.

[4] The best narrative of the 1885 strike can be found in Jeremy Kilar, *Michigan Lumbertowns: Lumbermen and Laborers in Saginaw, Bay City, and Muskegon, 1870-1905* (Detroit: Wayne State University Press, 1990). The strike itself is mentioned in several works, including Daniel Yakes, "Ten Hours or No Sawdust: a Study of Strikes in the Michigan Lumber Industry, 1881-1885" (master's thesis, Western Michigan University, 1969). Many authors, with the exception of Kilar, argue that lumber workers struck because of confusion over when the law was enacted.

of Barry's acquittal on all criminal charges by a vote of ten to two.[5] Barry's troubles, however, were not over. William Webber, a wealthy lumberman and attorney, beloved by businessmen and politicians, sued Barry for damages to his mill during the strike.[6] The lumber barons may not have made an example of Barry during his criminal trial, but they were determined to do so in a civil suit. Although the strike caused prices for salt and lumber to increase, which greatly profited the paternalistic lumber owners, they decided that someone had to pay for what they perceived as the loss of their property right. Workers, also, caused the lumber barons to take action against Barry by challenging authority. After all, employers knew best. [7]

The 1885 Saginaw Valley strike and ensuing lawsuits suggest that the strike was not just over better working conditions, but about differing visions of capitalists and male laborers about their legitimate rights as men. Lumber barons owned the property, machinery, and buildings used for lumber production. They put their capital at risk to run their businesses. Mill owners therefore asserted that it was their right to control the method and means of production, including mandating work terms and conditions. Lumbermen claimed that their work lay at the heart of

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This was not so; Barry helped draft the law, so he definitely knew when it was going to start. Also, the strikers were upset with a clause that negated its effectiveness, not the effective date of the law. This misunderstanding seems to stem from the labor commissioner's account of the strike. Commissioner Pond reported in his accounting that the strikers were upset over the start date of the law. Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125.

[5] "Not Guilty," *Saginaw Daily Courier*, January 23, 1886.

[6] *Webber v. Barry*, 66 Mich. 127 (1887).

[7] Criminal trials played an important role in the shaping of labor organizations. Victoria Hattam sees conspiracy cases as arguments over the terms on which economic growth was to proceed and, therefore, a central force in shaping the labor movement. Judicial decisions of conspiracy cases were pivotal to creating a "politically weak labor movement in the United States." According to Hattam, conspiracy doctrine was the primary way that "American courts regulated working-class organization." Victoria Hattam, *Labor Visions and State Power: The Origins of Business Unionism in the United States* (Princeton: Princeton University Press, 1993), ix, 30.

lumber production.[8] They were men, not machines. As men, they had a right to negotiate with their employers over terms of work. Inequity marked relations between workers and capital. Working men sought protective labor legislation to form a legal basis upon which to build employment relations.

Protective labor legislation for men was hotly contested. Industrialists, generally, did not want to cede control of their businesses to legislators, especially those representing labor unions.[9] When their companies could profit from government regulation, however, industrialists sought legislative interference. Capitalists did not want regulation that would empower workers though; businessmen appealed the validity of many protective labor laws that then deprived them of property rights without due process of law.

The 1885 Saginaw Valley strike, like other organized work stoppages of the time, involved unionization. Labor union leaders defined labor rights arguments in the 1880s and 1890s.[10] Large numbers of mostly male workers organized under the Knights of Labor.[11]

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[8] The terms lumber workers, lumbermen, mill men, and mill workers refer to those laborers who worked in and around the lumber and salt mills of the Saginaw Valley.

[9] Victoria Hattam sees the labor movement in the second half of the nineteenth century as distinct from the first and highlights state judiciary's renewed effort to punish strikes. Karen Orren finds that in the period from 1870-1920, American judges administered one set of rules to determine rights when the matter was commerce and another set for labor. Morton Horwitz maintains that the courts and treatise writers were instrumental in promoting a redistribution of wealth against the weakest classes, which would include laborers. Victoria Hattam, *Labor Visions and State Power* (1993); Karen Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States* (Cambridge: Cambridge University Press, 1991); Morton Horwitz, *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy* (New York: Oxford University Press, 1992).

[10] Much scholarly attention has been given to labor organizations. Scholars have generally looked at working-class behavior from a Marxist standpoint (emphasis on solidarity) or a modernist view (emphasis on conflicts). Richard Oestreicher argues that, for Michigan workers, both class solidarity and fragmentation were consequences of industrialization and urbanization. Richard Oestreicher, *Solidarity and Fragmentation: Working People and Class Consciousness in Detroit, 1875-1900* (Urbana: University of Illinois Press, 1986).

Knights of Labor members rose up together in nation-wide strikes or unified locally to force employers to acknowledge the labor problem.[12] The Knights of Labor cultivated fellowship, brotherly support, and class consciousness. Increasingly, the Knights crafted labor laws as a solution to labor problems and to assert control over employment relations. Michigan's ten-hour workday was one of those laws.[13] The ten-hour law afforded men a maximum workday upon which to build an employment contract. When the law was enacted with a clause allowing employers to circumvent the ten-hour workday, mill workers struck.[14]

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[11] The term knight itself in the Knights of Labor conveys a masculine membership. Thomas Barry was a Knight of Labor; part of his manliness was tied to the fact that he was fighting to rescue laborers from oppression.

Scholars have raised the importance of masculinity to unionization. In *Writing the Wrongs: Eva Valesh and the Rise of Labor Journalism* (Chapel Hill: University of North Carolina Press, 2002), Elizabeth Faue proves the extent to which gender was a factor in labor unionization. Through analysis of the work of Eva Valesh, labor journalist, Faue shows the extent to which gender politics affected the labor movement. Mary Blewett shows how the political meaning of masculinity affected the labor strategies of textile workers in Massachusetts. Mary Blewitt, "Manhood and the Market: The Politics of Gender and Class among the Textile Workers of Fall River, Massachusetts, 1870-1880," in *Work Engendered: Toward a New History of American Labor* ed. Ava Baron (Ithaca: Cornell University Press, 1991), 92-113.

[12] The Knights of Labor were a large and powerful group in Michigan. Joseph Labadie, Henry Robinson, Judson Grenell, and Thomas Barry were all strong leaders of the group in Michigan. Many of these men also served on the state legislature. Judson Grenell and Joseph Labadie were socialists and printers. Their labor papers often combined Knights of Labor ideology with socialist doctrine. For a discussion of how the Knights affected American politics, see Leon Fink, *Workingmen's Democracy: The Knights of Labor and American Politics* (Urbana: University of Illinois Press, 1983). Richard Oestreicher specifically studies the Knights of Labor in Michigan. Richard Oestreicher, "The Knights of Labor in Michigan: Sources of Growth and Decline" (doctoral dissertation, Michigan State University, 1973). For an earlier view, see Maurice Ramsey, "The Knights of Labor in Michigan" (1932). Carl Parry, who acknowledges Joseph Labadie and Thomas Barry in the introduction to his doctoral dissertation, also provides interesting commentary. Carl Parry, "Labor Legislation in Michigan" (doctoral dissertation, University of Michigan, 1909).

[13] *Public Acts of Michigan*, 1885, no. 137, 154-155.

[14] The clause allowed employers to contract with their employees for longer hours.

Legal actions resulting from the 1885 Saginaw Valley strike offer a window into judicial interpretation of industrial structure and control.[15] Courts generally conceded the primacy of businessmen's property rights in contests with state police powers. Across the nation, justices also endorsed the ability of capitalists to pursue trade unmolested. Generally then the court affirmed state conspiracy laws. Like many other states, Michigan's conspiracy law was used to prosecute unionists.[16] In the Saginaw Valley, one of the strike's leaders, Thomas Barry, was jailed on numerous counts of conspiracy. The Barry trials show a seemingly capital-friendly judiciary deploying conspiracy doctrine against workers.[17] Michigan justices implied that the property rights of lumber barons were more important than protective laws for lumbermen.

Gender constructs played a complex role in the 1885 Saginaw Valley strike and the subsequent trials that Thomas Barry endured. Ideas of masculinity affected the way that lumber men dealt with lumber barons and, ultimately, influenced their decision to strike. They were not going to be emasculated by their employers without a fight. The industrial system had stripped men of the pride and self-determination that characterized manhood. Work stoppages afforded laborers power to assert control over their work lives and their manhood. Michigan lumbermen fought for protection against workplace abuses, their rights as laborers against paternalistic practices, and self-ownership. Although the movement for decreased hours of labor in the lumber industry had been ongoing for a decade, no action reached the Michigan Supreme Court until *Webber v. Barry* (1887), which originated from a dispute in the Saginaw Valley region.[18] It

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[15] Scholars have not examined the protectionist arguments underlying the strike.

[16] *Public Acts of Michigan*, 1877, no. 11.

[17] *Webber v. Barry*, 66 Mich. 127 (1887).

[18] Ibid.

is one of several cases demonstrating the role that gender ascription played in judicial decisions.[19]

By 1885, the nation depended on Saginaw Valley manufacturers for their salt and lumber production. Economies of other states relied upon lumber from the Saginaw Valley for the construction of buildings and furnishings in rapidly expanding cities. Michigan hardwood was prized for its pleasing density and scarce knots. In Chicago and New York, the newspapers repeatedly extolled the amount and quality of salt and lumber coming from the Saginaw Valley (Saginaw and Bay Cities).[20] By 1869, Michigan was producing more lumber than any other state.[21] During the peak years of lumber activity in the early 1880s, Michigan produced a quarter

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[19] Gender politics affected court proceedings and judicial outcomes. Linda Kerber explains that from our nation's founding women have been treated differently by the courts. Linda Kerber, *No Constitutional Right to be Ladies: Women and the Obligations of Citizenship* (New York: Hill and Wang, 2001). Numerous scholars, such as Sandra VanBurkleo, Vivien Hart, Judith Baer, and Julie Novkov, have studied the different (often exclusionary) status that the judiciary accorded women. Sandra VanBurkleo, *Belonging to the World: Women's Rights and American Constitutional Culture* (New York: Oxford University Press, 2002); Vivien Hart, *Bound by Our Constitution: Women, Workers, and the Minimum Wage* (Princeton: Princeton University Press, 1994); Julie Novkov, *Constituting Workers, Protecting Women: Gender, Law, and the Labor in the Progressive and New Deal Years* (Ann Arbor: University of Michigan Press, 2001).

[20] "East Saginaw: A Thriving Michigan City--Its Vast Salt and Lumber Interests, *Chicago Daily Times*, January 19, 1882.

[21] Much has been written about the lumber industry, the production of lumber, the labor process, and the importance of lumber to the development of Michigan's statehood. Jeremy Kilar's study in *Michigan's Lumbertowns* provided much of the background information, as did conversations with him. The lumber exhibit at the Castle Museum of Saginaw, Michigan provided excellent primary sources in the manner of lumbering implements. From the 1860s through the turn of the century, Wallace and William Goodridge, operated a photo studio in Saginaw. Their photographs provide visual documentation of Saginaw's lumbering era. Goodridge Brothers Studio, photos, 1870-1900, Eddy Local History and Genealogical Collection, Hoyt Public Library, Saginaw. For bibliographic information on the Goodridge Brothers, see John Jezierski,

of the nation's lumber. Much of that lumber came from the Saginaw Valley region. By 1881, McGraw Mill of Bay City was said to be the largest mill in the world.[22]

Technological changes in the 1860s and 1870s brought greater efficiency to the lumber industry and changed skilled workers' lives. The creation of the steam saw in the 1860s resulted in mills running longer hours and producing more cut board, but this innovation also meant that sawyers worked even longer hours at a faster pace. The "Big Wheel" and narrow gauge railroad made the lumber industry a year-round enterprise.[23] From sun up until sun down, lumberjacks used saws and axes to clear forests while they avoided bone-crushing trees falling around them. After lumberjacks felled trees, they moved the logs to the nearest river for transport. River drivers moved the logs downstream. Log driving carried a constant risk of drowning, as river drivers walked across floating logs to facilitate movement and dislodge logjams. Once the logs reached their destinations, mill hands took over. Sawyers faced loss of limbs or digits to the saw, as well as a risk of explosion from steam engines. Prolonged exposure to sawdust caused

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Enterprising Images: The Goodridge Brothers, African American Photographers, 1847-1922 (Detroit: Wayne State University Press, 2000).

[22] Ralph Stroebel, *Saginaw Sesquicentennial: The 150th Anniversary of the Signing of the Treaty of Saginaw* (Saginaw: McKay Press, 1969), 29.

[23] Willis Dunbar and George May, *Michigan: A History of the Wolverine State* (Grand Rapids: William B. Eerdmans Publishing, 1995), 341-348. Even after the creation of the "Big Wheel" and the narrow-gauge railroad that reduced log moving by snow sleds, the logging industry was still reliant on cold weather. A network of rivers crisscrossed Michigan, which provided a convenient transportation system for logs. In the winter, lumberjacks cut down trees and placed the logs by rivers until the spring thaw. When the snow and ice melted, the logs floated on flooded streams to the mills—a process known as booming.

respiratory and pulmonary problems. Dockwollopers occupied the lowest rung of the worker hierarchy; their job was to burn excess sawdust and load boats with finished board.[24]

The 1880s were the heyday of lumber and salt production in the Saginaw Valley. In 1882, one billion feet of lumber floated down the Saginaw River alone.[25] But, while lumber was king, Saginaw reigned as one of the nation's leading salt producers. Sawdust, a plentiful byproduct of the mills, provided fuel to make salt brining a profitable side-industry for lumber mill owners. By 1880, production of salt in the Saginaw Valley reached 2,678,386 barrels or more than 13 million bushels.[26] Michigan produced more than 40% of the entire national supply of salt. Together, lumber and salt made mill owners very wealthy—a sharp contrast to the poverty of their workers.

Promoters drew laborers to Michigan with promises of employment, homes, and prosperity. Michigan avidly sought immigration through brochures and pamphlets extolling the area's riches.[27] The *Saginaw Weekly Courier* lauded the opportunities for those who came to the area. A reporter noted that "a poor man who goes to Michigan to settle needs but little money beyond what is necessary to transport him thence and support his family for a short time… . The lumber woods in the winter season employs thousands of men in various capacities, and boys

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[24] For information about the labor process, see Irene Hargreaves and Harold Foehl, *The Story of Logging the White Pine in the Saginaw Valley* (Bay City: Red Keg Press, 1964).

[25] Stroebel, *Saginaw Sesquicentennial*, 29.

[26] Ibid., 31.

[27] In the 1840s, John Almy published a six-page pamphlet to encourage immigration. Edward Thompson of Flint represented the state as an immigration agent in New York City; he published the 47-page "Emigrant's Guide to Michigan" in both English and German. Dunbar and May, 247. Jeremy Kilar suggests that many migrants moved to Saginaw, because the state's only "Commissioner of Emigration," Max Allardt, was from East Saginaw. Kilar, *Michigan Lumbertowns*, note 20, 330.

even are able to earn fair wages… . There is not the slightest chance of a poor man's family ever coming to want in Northern Michigan, if he be industrious, and they frugal."[28] Although the promise was only for a subsistence existence for a thrifty family, the promise of work drove male laborers to the area.[29]

Laboring men could bring their families to the Saginaw Valley secure in the knowledge that a commercial, urban center existed. Both the Saginaws (Saginaw developed as two separate cities until consolidation in 1889) and Bay City were built along the Tittabawassee River, which provided fresh water and ease of transportation with ferries that crossed regularly and bridges that spanned the river. In the cities, pine-plank sidewalks made for easy walking; homes, stores, and huckster wagons lined the city streets.[30] By the time of the 1885 Saginaw Valley strike, over 30,000 people called the Saginaws home. Bay City and the two Saginaws boasted a fire

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[28] "Michigan for Emigrants," *Saginaw Weekly Courier*, February 15, 1883.

[29] Kilar, *Michigan Lumbertowns*, 173. "The lumbertowns experienced phenomenal growth in the 1880s. Saginaw, 29, 541 people in 1880, burgeoned to 42,845 by 1884 and 46,322 in 1890. Bay City numbered 27,040 people in 1880, 38, 902 in 1884, and 40, 730 by the end of the decade."

[30] Lumber barons lived in palatial estates, while workers lived in shacks or modest homes. Merchants drove huckster wagons that offered groceries and afforded workers an opportunity to buy food at lower prices than company-owned stores. I analyzed numerous photos and postcards to draw conclusions about Saginaw's scenery in the 1880s. Photographs came from the Goodridge Brothers Studio, photos, 1870-1900, Eddy Local History and Genealogical Collection, Hoyt Public Library, Saginaw and various published sources: Roselynn Ederer, *Images of America: Saginaw County, Michigan* (Chicago: Arcadia Publishing, 2003); Jeremy Kilar, *Saginaw's Changeable Past: An Illustrated History* (St. Louis, G. Bradley Publishing, 1994); Roberta Morey, *Saginaw in Vintage Postcards* (Chicago: Arcadia Publishing, 2004); Roberta Morey, *Saginaw: Labor and Leisure—Vintage Postcard Series* (Chicago: Arcadia Publishing, 2006); *Saginaw Sesquicentennial: The 150th Anniversary of the Signing of the Treaty of Saginaw* (Saginaw: McKay Press, 1969).

department, a police department, and numerous other municipal amenities. The police and fire departments of all three cities were well-structured and efficient.[31]

Portraits of lumber towns as rough and tumble places filled with drunkards and prostitutes do not describe the Saginaw Valley. By the 1880s, the Saginaw Valley was not a wasteland where men brawled daily in the streets. Although there were houses of ill-repute and drinking establishments, the Saginaw Valley was home to culture as well as vice. Residents planted beautiful gardens and designed large public parks. Lumber barons provided worker with medical and educational facilities.[32] Working men could bring their families to the area with the knowledge that their children would be educated and their spiritual needs fulfilled.[33] Lumbermen could meet at Arbeiter Hall or the Germania Hall where the German Workingman's Association conducted meetings.[34] These associations assisted members when ill and helped with funeral expenses.

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[31] Throughout the city of East Saginaw, there were 25 fire alarm boxes and firefighters used direct-pressure fire hydrants. Jeremy Kilar, *Saginaw's Changeable Past*, 76-77. Much descriptive information about Saginaw came from this volume, including information about Saginaw's hotels, entertainment, churches, and educational facilities.

[32] Lumber barons paid for a Women's Hospital that provided health care to the wives and children of lumber workers. Jeremy Kilar, *Saginaw's Changeable Past*, 74.

[33] Numerous schools educated working-class children in both the Saginaw cities. Saginaw Valley schools were not typical, one-room schoolhouses, they were multi-story, brick and stone, ornate buildings adorned with architectural features. Saginaw schools sought to further enrich the minds of their students by giving away free textbooks and teaching Latin and Greek. Baptists, Catholics, Presbyterians, Episcopalians, and Methodists offered places to worship. Stained glass windows, a slated roof, walnut wood interior, heating, and gasolier light decorated the Methodist Episcopal Church. Religious institutions provided support for workers; The Home of the Friendless cared yearly for 80-100 orphans as well as for children of working parents. Morey, 37, 67-86.

[34] Workingmen's associations were important to the development of class consciousness and organization by laborers. These associations provided working men places to meet and discuss labor problems. The associations provided free copies of labor papers, held debates, and hosted guest speakers. The workingman's association was in many ways similar to the salons of

Although the Saginaw Valley offered culture, education, and municipal services, it was only a façade for the ugly industrial system that operated within its boundaries. Fed up with their inequitable working system, lumbermen fought for control of their conditions. As the Knights of Labor noted, "Will American freemen, toilers of the mill, the mine, the shop and the farm, who create the entire wealth of the Nation by their labor, and who control the destiny of the country by their ballots, supinely submit, without murmur or protest, to this rank and outrageous oppression?"[35] Lumber workers did not quietly accept their oppression. In July of 1872, mill workers in the Saginaw Valley unsuccessfully struck to lower the working day from twelve to ten hours a day. Prominent Saginaw Valley lumberman Henry Sage opposed the strike complaining that it would ruin his business. Referring to the workers' demand for a ten-hour day without a reduction in pay, Sage replied that "we can't stand the drain of extravagant expenses and partial idleness."[36] In nearby Wisconsin, loggers agitated in 1881 for a ten-hour day.[37] In 1882, lumber workers sought a ten-hour day in Muskegon.[38] It seemed to be a victory for labor when lumber owners announced that it had been decided "by a large majority to operate the mills

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Enlightenment thinkers. Arbeiter Hall was organized in 1869 to "assist members when sick, and to help with funeral expenses for members or spouses." Morey, 35.

[35] "The Ten-Hour Law: Its Evasion by the Slave Drivers of Michigan," *Labor Leaf,* September 30, 1885.

[36] H.W. Sage to H.W. Sage and Co., Wenona, June 17, 1872, quoted in Anita Shafer Goodstein, "Labor Relations in the Saginaw Valley Lumber Industry, 1865-1885," *Bulletin of the Business Historical Society* 27 (December 1953), 206.

[37] "Lumbermen on Strike," *New York Times*, July 19, 1881, 5.

[38] "Lumbermen at Muskegon Strike for a Reduction of Labor to Ten Hours a Day," *Chicago Daily Tribune*, April 7, 1882

and booms ten hours per day and no more."[39] But lumber barons reneged on their promise. It is no wonder that lumbermen were annoyed that, years later, lumber barons had not fulfilled their end of the bargain.[40]

Employer refusal to negotiate with labor ensured ongoing conflict. Although mill owners reported to Commissioner Cornelius Pond that they were unaware of labor unrest, they surely were aware of worker dissatisfaction. [41] It was easier for lumber owners to deny that a problem existed than to take the expensive steps necessary to rectify the issue. Some costs of production were set, but wages were not, nor were hours of labor. If employers bargained collectively with workers, it would mean they lost control over the cost of production and profit. Henry Sage told a reporter for the *Bay City Tribune* that lumber owners recognized the right of workers to individually contract the terms of their labor and for employers to negotiate individually those terms, but that the "rights of mobs…to enforce their views…we wholly deny."[42]

Knowing that they did not possess the ability to assert control over their workday, Knights of Labor men sought protection through the law.[43] In the two years leading up to the

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[39] "Ten Hours a Day," *Saginaw Daily Courier*, April 26, 1883. Businessmen wanted to keep legislatures out of their businesses so they would promise employees that conditions would be better if they negotiated individually with their employers. Andrea Tone maintains that maintains that business would make concessions to avoid legal force, such as acquiescing to some worker demands. Andrea Tone, *The Business of Benevolence: Industrial Paternalism in Progressive America* (Ithaca: Cornell University Press, 1997).

[40] "Five Hundred Shingle Men Out on Strike at Muskegon," *Detroit Free Press*, September 4, 1885.

[41] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125.

[42] "Editorial," *Bay City Tribune*, July 16, 1885.

[43] It is an interesting side note that the Bureau of Labor did not seriously consider the labor unrest surrounding a ten-hour day in their first two annual reports. Although the first two volumes of the annual reports acknowledge strikes occurring for a ten-hour day, it is not until the

1885 Saginaw Valley Strike, in fact, the Knights of Labor continually sought regulation of workdays.[44] The law was partially influenced by a national movement for hours limitations on work, but local agitation formed its core.[45] Reformers and unionists often contended that reducing hours for workers would "improve their opportunities for intellectual and moral cultivation…which [would] in any way ameliorate and elevate the condition of the laboring masses."[46] By instituting a maximum workday into law, Knights of Labor members hoped to build a foundation for binding negotiations in the future.

Representatives from the Knights of Labor helped to enact a ten-hour law that took effect in September of 1885.[47] The law, however, included a clause allowing employers to contract with workers for longer hours that negated its effectiveness. Many lumbermen in the Saginaw Valley were enraged that employers could skirt the law. Since the Knights of Labor had been

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third volume covering 1885 that the Bureau of Labor commissioner broaches the subject seriously.

[44] A synthesis of the movement for shorter working days can be found in David Roediger and Philip Foner, *Our Own Time: A History of American Labor and the Working Day* (New York: Greenwood Press, 1990).

[45] The *Labor Leaf* reported that the Knights of Labor provided impetus for the law. Reduction of hours was listed on the legislation program of the Knights of Labor for 1884. The Knights were represented in Michigan's legislature. According to the Knights of Labor, twelve Knights of Labor sat in the House and three in the Senate. *Labor Leaf*, May 20, 1885. Thomas Barry and Francis Cook (attorney from Muskegon) co-authored the law.

[46] Carl Eugene Parry, "Labor Legislation of Michigan" (Ph.D. diss., University of Michigan, 1909), 6.

[47] *Public Acts of Michigan*, 1885, no. 137, 154-155. The same year, Michigan legislators enacted a ten-hour day for women and children that did not allow freedom to contract otherwise. A true ten-hour workday only existed for women and children. *Public Acts of Michigan*, 1885, no. 39, 37-38.

influential in crafting the law, they were especially disheartened by the evasive clause. One of the Knights stated,

> The law should be their house of refuge. Dare they teach the people that law is only made for the poor and helpless, and is to be waved aside by the rich and powerful? We call upon our brothers of Michigan, embracing all men actuated by justice or humanity, to speak out in indignant tones of denunciation of this unholy, God-defying attempt of the lumber lords to enslave the workingmen in their employ. The brand of Cain should be burned into their shameless brows. It should be understood once and for all that the workingmen of Michigan cannot be enslaved, either by law or by the evasion of law.[48]

Employers who evaded the ten-hour law rendered powerless the unionists who had worked for its enactment. The Knights of Labor used the term slave to express their bondage, because slaves had been deprived of manhood. They wanted to brand their employers with the sign of Cain in reference to the Biblical story of God branding Cain for killing his brother Abel; the sign warned others that Cain was cursed. The Knights cursed their "slave-drivers" for stripping them of control over the workday.[49]

Men working in the lumber industry wanted liberty. To obtain the rights given to them by nature, lumbermen used religious language to show how employers were usurping them of "natural rights." Before the strike began in earnest, lumber workers passed around “A Strikers’ Circular” with "ten commandments" that they facetiously indicated had been given to them by their employers.[50] The circular indicated the extent to which lumbermen resented their bosses' oppressive control over their lives. Employers had assumed the prerogatives of greedy, scheming, oppressive, and vindictive tyrants.

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[48] "The Ten-Hour Law: Its Evasion by the Slave Drivers of Michigan," *Labor Leaf,* September 30, 1885.

[49] Ibid. For the story of Cain and Abel, see Genesis 4: 1-16 (New International Version).

[50] "A Strikers' Circular," July 16, 1885, box 30, Agnes Inglis Papers, Labadie Collection, University of Michigan.

1. Thou shalt have no other boss but me.
2. Thou shalt not make to thyself any comforts or any likeness of anything to thine own interest, neither on the earth above nor in the pit below. Thou shalt bow down to me and worship me, for I am thy boss, and a zealous boss, and I will show thee no mercy, but endeavor to make thee keep my commandments.
3. Thou shalt not take the name of thy boss in vain, lest I discharge thee…
4. Remember that thou must work from 6:30 a.m. to 6:45 p.m. six days a week, with all thy might and strength and do all that I desire of thee, and on the seventh day thou shalt stay at home and do no manner of work, but thou shalt do all that thou canst to recruit thy exhausted strength for my services on Monday morning.
5. Honor thy boss, that thy days may be short and few for I shalt not want thee when thou gettest old, and have to spend thy days at the Saginaw county farm, as I shalt not care.
6. Thou shalt not belong to any labormen's society or any organization, whether it be for social purposes or not, for it is against my will.
7. Thou shalt always speak well of me, although I oppose thee and continue to cut thy wages down from 5 to 15 percent. Thou shalt be content if I only find thee work and pay thee 90 cents a day and advise thee to save half of it.
8. Thou shalt starve and go naked and cold if it is anything to my interest. Thou shalt earn money to pay my salary and furnish my house with costly furniture and my stable with slick horses.
9. Thou shalt hold no meetings to consider thine own interests nor protest against a reduction of wages. Thou shalt read no newspapers of any sort, as I wish to keep thee in ignorance and poverty all the days of thy life.
10. Thou shalt not covet thy master's money, or his comforts, or his luxuries or anything that it is…Thou shalt not object to anything, as I want to reign over thee, and tyrannize over thee, and keep thee in bondage all the days of thy life.[51]

The circular stressed the multitude of conflicts within the Saginaw Valley lumber industry. Lumber barons had stripped mill men of their independence requiring them to put their employers first before all others, even their god. Workers pointed out that employers lived lives of privilege while laborers suffered. The piece identified many problems: inadequate wages, long hours, employer selfishness, and worker suffering, but emphasized that lumbermen had no control. Mill workers could not join together to better their situation. Lumber barons wanted their employees to be isolated and ignorant so that they would not question authority.

[51] "A Strikers' Circular," July 16, 1885, box 30, Agnes Inglis Papers, Labadie Collection, University of Michigan.

Capital had emasculated labor. A Knight of Labor articulated the impotence felt by workers, "Where the independence of the workingmen of this country? Is it not a fallacy, a myth, when our lumber barons, like the feudal lords, can call upon an armed mob to coerce their wage slaves into subjection?"[52] Laborers worked in a society reminiscent of feudalism, hence the term "lumber barons." Many workers did not make enough money to subsist. Their houses were ramshackle buildings infested with rats, fleas, lice, and other pests. If laborers attempted to better their condition, they faced unemployment. A reporter for the *Lumberman's Gazette* chastised lumber workers who complained about wage reductions claiming that on four dollars a day he "could dress his wife in silks."[53] In 1885, only a person with a key position in a mill during the most prosperous time might have commanded $4.00 per day; average laborers earned around $1.60 per day in 1885.[54]

In May of 1885, while a ten-hour law was before the Michigan Congress, lumber workers in the Saginaw Valley requested a joint meeting of labor and mill owners to discuss hours and wages. The men hoped that their employers would respect them enough to allow an open dialogue. They also warned their employers that if certain problems were not rectified, they would strike.[55] They wanted a reduction in hours from an eleven or twelve hour day to a ten-hour day with the same wages as they had been paid for the longer day (the men recently had

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[52] "Barry's Persecution," *Labor Leaf*, October 7, 1885.

[53] *Lumberman's Gazette*, 1875, issue 20, quoted in Goodstein, 206. Goodstein also documents the conditions of the homes that Saginaw Valley laborers lived in.

[54] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125.

[55] During the strike, when labor commissioner Pond asked the lumber barons about the proposed meeting, they acted as if it was the first that they had ever heard of it. Cornelius V. R. Pond, Report, 1885, Bentley Archive, University of Michigan.

received a pay cut). They wanted to receive their pay more frequently; it was not uncommon for mill men to be paid once a month. Many owners made no attempt to pay wages regularly. If the owner's bank account was flush, he paid his men; if not, he did not. In a period of economic struggle, Henry Sage instructed his manager, "Hire your men low and pay them from the store—we cannot raise cash and there must be no reliance on it."[56] Infrequency of pay meant that mill men could not predict their household income or responsibly, pay their expenses, or support their families. Furthermore, the men wanted to end the payment of wages by store credit. They could obtain groceries at a cheaper rate from huckster wagons and take advantage of market competition if they could shop where they pleased. The inability to steadily support their families caused anxiety and emasculation.[57]

Saginaw Valley mill men were rights-conscious. By the time of the strike, the Michigan legislature had approved a ten-hour day for all workers. Lumber workers understood their legal rights: in September they would be able to contract for a ten-hour day. But they also knew that they possessed no right to actually enforce the law. A Knight of Labor expressed despair and anger over the ten-hour law: "And now these millionaires with untold wealth distending their plethoric pockets, have the stolid assurance, the soulless tyranny, to openly practice this brazen oppression in the eyes of the whole State. They bluntly…make the law of none [*sic*] effect."[58] Knights of Labor unionists sought to assert: the right to obtain the highest price for one's labor,

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[56] H.W. Sage to H.W. Sage and Co., Wenona, November 28, 1876, quoted in Goodstein, 198.

[57] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125. In this volume, the labor commissioner reports pages of comments made by Michigan laborers about their work scene. Many of the comments reflect the desire of the laborers to support their families.

[58] "The Ten-Hour Law: Its Evasion by the Slave Drivers of Michigan," *Labor Leaf,* September 30, 1885.

the right to work unmolested, the right to quit work, the right to feed one's family, the right to relatively safe employment, and the right to control one's own destiny.[59] Union men understood the distinct difference between their legal rights and what they perceived as the rights of a workingman. They struck to enforce their legal and extra-legal rights, which included protective labor legislation.

The striking men received little support from local newspaper reporters. The *Saginaw Daily Courier* consistently warned that, although workers had a right to obtain the highest prices for their labor and to quit work, their claims could not eclipse those of other men to continue their employment at the mills.[60] Workers' claims could not trump property rights. The paper consistently cautioned striking men against resorting to acts of violence. Wrote a journalist for the *Saginaw Daily Courier*, "It is every man's privilege to make his own terms with his employer, and no outside person can lawfully interfere with the exercise of that privilege… . It is their right, peaceably, to obtain the best hours and wages possible, but they should be careful and not interfere with the same rights of others which they demand for themselves."[61]

Lumber workers gathered more support from the worker-friendly paper, the *Detroit Evening Journal*. Although the *Saginaw Daily Courier* portrayed Bay City labor leader Daniel C. Blinn as a dangerous radical, the *Detroit Evening Journal* gave him favorable coverage, even

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[59] Thomas Clark argues that unionists developed a rights-based language that sharpened class consciousness. He argues that California workers, through union-friendly legislators, enacted reforms that required more state intervention. Although workers ultimately failed to pass anti-injunction laws and safeguard collective bargaining, they did develop a careful defense of worker's rights. Thomas Clark, *Defending Rights: Law, Labor Politics, and the State of California, 1890-1925* (Detroit: Wayne State University Press, 2002).

[60] "Strikers in Saginaw," *Saginaw Daily Courier*, July 11, 1885.

[61] "A Word of Caution," *Saginaw Daily Courier*, July 12, 1885.

printing one of Blinn's rebellion-inciting poems.[62] An article in the *Detroit Evening Journal* noted that Blinn encouraged lumbermen to "Storm the fort, ye Knights of Labor, God defend our cause; equal rights for friend and neighbor, down with tyrant's laws."[63] Detroit did not depend on lumber mills for its economic survival, as did the Saginaw Valley; the *Saginaw Daily Courier* therefore took a pro-lumber stance.[64] Mill men argued that mill owners deprived them of their rights, while *Saginaw Daily Courier* reporters asserted that striking took away the right to work.[65]

For these strikers, their status as working men was more important to their identity than ethnicity or race. By the time of the strike, 40% of Saginaw's working population was foreign-born; French-Canadians and Germans made up 81% of Saginaw's foreign-born population.[66] Saginaw was less ethnically diverse than Bay City. Bay City had a large Polish population in addition to French and German citizens. Sources do not show that ethnic tensions strongly influenced the Saginaw strikers one way or the other. Lumber workers saw themselves as

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[62] "At Bay City," *Saginaw Daily Courier*, July 16, 1885.

[63] D. C. Blinn, *Detroit Evening Journal*, July 17, 1885.

[64] Ownership of the *Saginaw Daily Courier* changed hands around the time of the strike. It appears that in 1885, the owner was also a lumber baron, but primary sources are unclear as to the exact date of the ownership change so I cannot state with certainty that the owner was a lumber baron. It is abundantly clear from advertisements that the newspaper derived much revenue from lumber-related advertising. Reporter jealousy may have also been a cause for negative coverage of the strike. On July 14, 1885, a reporter for the *Saginaw Daily Courier* explained that he, too, felt overworked, but that he and his fellow reporters did not strike. Saginaw Valley reporting sharply differed from that in the Detroit area where printers were unionized and labor leaders of printing unions, Judson Grenell and Joseph Labadie, held Socialist views.

[65] "A Word of Caution," *Saginaw Daily Courier*, July 12, 1885.

[66] Kilar teases out the problems that Polish workers faced in Bay City and the extent to which their ethnicity affected their identity. Kilar remarks that "the immigrants in the lumbertowns failed to develop a real class consciousness." Jeremy Kilar, *Michigan's Lumbertowns*, 177, 210.

laboring men who were trying to claim public space, assert their wage-earner status as men, and control labor contracts.

After repeatedly trying to negotiate with their employers, lumber workers either had to strike or give up. The Knights of Labor expressed disgust with the manner in which capital had steamrolled the workers' ten-hour law:

> Yet capital is equally determined to override and defeat the Ten-hour law. And why not? Have they not the wealth, the influence, and the necessary disregard for laws which are not of their framing or dictation; and have they not also the aid of His Excellency, the Governor (a lumber baron of first magnitude) to furnish them with troops at the expense of the people to coerce their employes [*sic*] when all other means fail them?[67]

The union had sought legislation for their protection, but were not completely successful. Capital was better represented than labor in the legislature. Lumbermen had to decide whether to give up or strike.

On Monday, July 6, 1885, the strike in the Saginaw Valley began. Starting first in Bay City and moving quickly to the Saginaws, the strike shut down lumber production in the area. Several thousand lumber workers closed 77 mills and 58 salt blocks.[68] The strike affected 4,991 employees over 16 years of age and 563 under 16.[69] The strikers wanted to work no more than ten hours a day and to be paid fairly and consistently. Most mill owners attested that their mills

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[67] "Poverty Again Crushed by Wealth," *Labor Leaf*, September 30, 1885. The Knights of Labor chose to spell employee with one "e." That spelling was the masculine spelling of the word, whereas employee referred to male or female workers.

[68] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125. The year 1886 is the publication date, but the volumes reflect information collected in the previous year.

[69] Ibid.

ran for at least 11 hours a day. At the time of the strike, 879 lumber workers reported that they were paid partly in store credit and 2,029 stated that they were paid only monthly.[70]

Financially, the lumbermen were ill-prepared for the strike. There were no social systems in place to assist workers with the necessities of life. The Knights of Labor did not initially provide financial support for the strikers, but later provided meals for the families. The Knights provided ideological support to the strikers by calling Michigan laborers to action: "How long, men of Michigan! How long will this state of affairs last? It is in your hands. You are the judge, jury, and last, but not the least, you are the sheriff to execute the sentence when passed. Will you do it?"[71] When interviewed about the strike, Thomas Barry indicated that the Knights supported the strikers because "men do not strike for nothing."[72] The men were rational and struck only when faced with no other alternative. According to mill owner W.B. Rouse, whose mill had been closed on Monday for boiler cleaning, as the men started for home, "one man took a bandanna handkerchief from another man's pocket, fastened it to a stock, and, as they were near McEwen's mill, waived it in the air and shouted, 'Hurrah for ten hours'."[73] This seems to have been a signal for the strike, as men nearby also started yelling 'hurrah' and induced other lumbermen to leave their mills.

On July 7, 1885, the strike gained momentum. The strikers, accompanied by a brass band, paraded up and down the streets of Bay City carrying home-spun banners stating, "Ten

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[70] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125.

[71] "Poverty Again Crushed by Wealth," *Labor Leaf*, September 30, 1885.

[72] "Thomas Barry," *Saginaw Daily Courier*, July 7, 1885.

[73] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125.

hours is a day's work."[74] The men showed a patriotic spirit as they sang "Rally Round the Flag Boys," a song of the Civil War advocating liberty, manliness, and freedom.[75] The theme of liberty, so deeply tied to the Civil War, ran throughout the strike. In a speech on July 13, Barry noted that when men had gone off to fight the Civil War they were considered heroes and thanked, but this time when laborers were fighting for freedom they were "classed as dangerous men, and why?...because [they] wanted a little more time to cultivate the acquaintance of [their] wife and children."[76] When they fought for their country, men were thanked, but when they fought to be heads of households, they were vilified. The lumbermen marched from mill to mill down Water St. in Bay City encouraging men to strike; as the strikers progressed, their numbers grew to the hundreds. The sun shone brightly and mill men held high hopes for change through solidarity. Strikers emphasized mutuality: "As long as the labor interests are divided, capital will be triumphant."[77] Another worker noted the peaceful atmosphere of the strike: "We don't want any shooting, what we want is shots down 'ere---food," as he pointed to his stomach.[78] As the striking men paraded down the street, they played a funeral march and "buried" the eleven-hour day.[79] By July 9, strikers closed all the mills in Bay City that operated over ten hours a day. The town grew eerily silent; there were few sounds of saws, few men moving about the mills, few boats pulling up for delivery, and little evidence of production.

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[74] "The Strike at Bay City," *Saginaw Daily Courier*, July 8, 1885.

[75] "Strikers in Saginaw," *Saginaw Daily Courier*, July 11, 1885.

[76] "Worried Wageworkers," *Saginaw Daily Courier*, July 14, 1885.

[77] "The Strike Spreading," *Saginaw Daily Courier*, July 9, 1885.

[78] Ibid.

[79] "The Latest Reports," *Saginaw Daily Courier*, July 12, 1885.

On July 10, a boat took 75 dockwollopers from Bay City to Saginaw. Thomas Barry accompanied the men and spoke to the Saginaw laborers at 1:00 p.m.[80] A thousand people gathered to hear Barry speak. Barry encouraged the strikers to "act peaceably and make no riotous demonstration."[81] He advised the men that law and order must be preserved and that no man should attempt to violently induce another to quit work. Barry had assumed the position of strike leader and took responsibility for the group: "if there are any depredations, any destruction of property, I will be responsible. I will take that responsibility…I place my life, my liberty in your hands; see that you protect it. We have a moral right; that right we will defend."[82] After Barry's speech, a group of at least 200 mill workers, salt workers, and dockwollopers marched from mill to mill inquiring about the satisfaction of other workers with their daily hours.[83] They carried the American flag and banners calling for a ten-hour day.[84]

Thanks to the efforts of Thomas Barry and the strikers to make this a peaceful affair, very little violence or damage occurred during the strike. Barry counseled the men, "all you have to do is to stick together and do it manfully, not in a riotous or boisterous manner, and you will succeed."[85] A couple of agitated strikers attacked a man who they believed to have assaulted Thomas Barry, but Barry was able to keep control of the situation and called the strikers off the

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[80] "The Stevedores' Strike," *Saginaw Daily Courier*, July 10, 1885.

[81] "Strikers in Saginaw," *Saginaw Daily Courier*, July 11, 1885.

[82] Ibid.

[83] "The Striking Dockwollopers," *Saginaw Daily Courier*, July 12, 1885.

[84] "Strikers in Saginaw," *Saginaw Daily Courier*, July 11, 1885.

[85] "Meeting at Carrollton," *Saginaw Daily Courier*, July 14, 1885.

man.[86] The *Saginaw Daily Courier* noted that the men "were quiet and orderly, especially while marching."[87] A few strikers put out the fire of a steam engine that fueled a mill, but very little personal property was damaged. Regardless of the strike's peacefulness, the mayors of both the Saginaws suspended freedom of assembly. The mayors forbade "all citizens from assembling in crowds or processions in the streets or elsewhere until law and order [was] fully restored."[88] Barry encouraged the men to "shun liquor and beer and by this means keep a level head, do no lawless acts and commit no depredations."[89] Although the striking men complied with Barry' wishes by abstaining from drinking, the mayors of the Saginaws ordered the saloons to close their doors. Barry's call for the strikers to avoid saloons was meant to show their seriousness of purpose and self-control. By closing the bars, however, the mayor did not give the men such an opportunity.[90]

On July 11, the mayors of the Saginaws telegraphed Governor Russell Alger and asked for militia to be sent to the area.[91] Sheriff Angus McIntyre of Saginaw reported to Alger that the strikers were peaceful and that local police had matters under control. The mill owners suggested to McIntyre that he get a Gatling gun to control the crowd. Sheriff McIntyre declined;

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[86] "Strikers in Saginaw," *Saginaw Daily Courier*, July 11, 1885. The paper reports that Thomas Barry stopped a skirmish by throwing himself into the fight and telling the men to desist.

[87] Ibid.

[88] "Worried Wageworkers," *Saginaw Daily Courier*, July 14, 1885.

[89] "Meeting at Carrollton," *Saginaw Daily Courier*, July 14, 1885.

[90] "Worried Wageworkers," *Saginaw Daily Courier*, July 14, 1885. The *Saginaw Daily Courier* printed the proclamation issued by Mayor John Estabrook and Mayor Charles Benjamin.

[91] "The Military Called Out," *Saginaw Daily Courier*, July 14, 1885.

the owners' reaction, he argued, was extreme.[92] McIntyre did not think the threat of violence to be great, but, against the advice of the sheriff, on July 12, the mayor of Saginaw telegraphed for 100 of Pinkerton's men to be sent from Chicago.[93]

Although the strike had not been violent and Sheriff McIntyre had reassured the lumber barons that local police would control the group, Governor Alger mobilized the militia. In a telegraph to Captain Wyman Staley of Company H of the First Michigan State Troops, Alger ordered, "You will have your company in readiness to go to Saginaw on 30 minutes notice if required, to aid in suppressing riots and protecting life and property. If called, you will report for duty to Sheriff McIntyre, of Saginaw County."[94] Alger signed the telegraph as Commander-in-Chief. Alger's concern over capital's property rights undercut the lumbermen's right to self-ownership. Similarly, Mayor Estabrook of East Saginaw City protected the lumber barons. He addressed the citizens of Saginaw:

> Our city has recently been invaded by lawless men from other localities, and in defiance of law and order have by threats and violence prevented our citizens from continuing their accustomed peaceful pursuits. I have therefore invoked the aid of the State and county authorities to prevent any further violence or disturbance, and made such preparations as will in my judgment afford ample protection to all in assuming their legitimate and peaceful business, and defend those who desire to resume their accustomed labor in the mills or shops, or in the streets or at their homes. And to that end in the performance of my duty I hereby admonish, request, command and forbid all citizens and others from assembling in crowds or processions in the streets or elsewhere

[92] Information regarding Sheriff McIntyre's state of mind taken from his statement to Labor Commissioner Cornelius Pond. Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125.

[93] "Regarding Pinkerton's Men," *Saginaw Daily Courier*, July 14, 1885.The use of private detective agencies to deter labor union strategies was commonplace in the late 1800s. "Detective" agencies sent hired guns to areas of labor turmoil to break up the strikes through intimidation and/or violence. On private policing, see Robert Weiss, "Private Detective Agencies and Labour Discipline in the United States, 1855-1946," *The Historical Journal* 29 (1986), 87-107.

[94] "The Military Called Out," *Saginaw Daily Courier*, July 14, 1885.

> until law and order is fully restored. Such gatherings will be regarded as riotous and will be dispersed by force if necessary. I ask the cooperation of all good and law abiding citizens in maintaining peace and good order; assuring that the power of the city, county, and State will be exercised to the fullest extent in protecting life and property.[95]

Mayor Charles Benjamin of Saginaw made a similar proclamation.[96] Mayor Estabrook blamed outsiders to some extent for riling up the workers making the striking men seem like dupes in the hands of labor agitators. By claiming that the strikers were not acting like rational men, the lumber barons could defend their use of Pinkerton men.

The arrival of Pinkerton's men upset both strikers and community members. Bay City's Common Council viewed "with regret and indignation" the invasion of their city by "an armed force of alien mercenaries," which they felt was an "insult to the honesty, loyalty and sense of duty of [their] law-abiding citizens."[97] Thomas Barry called the Pinkerton men "red-handed murderers…brought for the purpose of killing the honest laboring men, who had simply demanded their rights;" their rights being the ability to negotiate the labor contract.[98] By calling in the state militia and the Pinkerton men, the mill owners showed their workers that insubordination would not be tolerated. Instead of stopping the strike, however, the arrival of outside forces seemed to encourage working men. Typographical Union no. 81 of Bay City stated that they were in full support of the strikers.[99] The strike of the lumber laborers also

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[95] "A Change Comes," *Saginaw Daily Courier*, July 14, 1885.

[96] "At Saginaw City," *Saginaw Daily Courier*, July 14, 1885.

[97] "The Latest From Bay City," *Saginaw Daily Courier*, July 14, 1885.

[98] "Worried Wageworkers," *Saginaw Daily Courier*, July 14, 1885.

[99] "The Printers," *Saginaw Daily Courier*, July 14, 1885.

encouraged strikes by shipyard workers and stone cutters in Bay City. In support of the strikers, the boot-blacks of Bay City raised their prices.[100]

On July 14, 1885, local sheriffs arrested Thomas Barry for conspiring to obstruct trade.[101] This arrest was the first of many for Barry during this strike. Each arrest carried a $3000 bail amount—an exorbitant fee for the time. For each arrest, Barry posted bail with funds from the Knights of Labor and prominent Saginaw citizens.[102] Speaking to a crowd after his arrest, Barry thanked the people for making his bail and said that he hoped the mayors "would make as strenuous efforts to enforce the 10 hour act when it became a law in September as they were now" in seeking to make sure that the conspiracy law was not violated.[103] Barry's statement highlighted frustrations that lumbermen felt about legal protection of capitalists. Over the course of the next few days, various mill owners lodged conspiracy complaints and Barry was arrested again. On July 15, Governor Alger encouraged citizens to tell law officials if any workingman was being threatened for working. He declared that all workingmen would be "protected in the enjoyment of the rights guaranteed by law."[104]

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[100] "Resolutions of Sympathy," *Saginaw Daily Courier*, July 19, 1885.

[101] The charge was made by Mayor Charles L. Benjamin of Saginaw City and read "On the 10th day of July AD 1885 in the City of Saginaw, Thomas B. Barry…being persons of evil minds and disposition, with force and arms unlawfully and willfully did conspire, combine, confederate, and agree together willfully and maliciously to obstruct and impede the regular operations and conduct of the business of one Arthur Barnard." "Still Stubborn," *Saginaw Weekly Courier*, July 15, 1885.

[102] "Arrested for Conspiracy," *Saginaw Daily Courier*, July 15, 1885.

[103] Ibid.

[104] "Still Stubborn," *Saginaw Weekly Courier*, July 15, 1885.

Governor Alger, who had an economic stake in one of the Saginaw mills, requested that the Bureau of Labor investigate the matter.[105] The Bureau's commissioner, Cornelius Pond, arrived in the Saginaw Valley on July 16. Throughout his week-long stay, Pond visited strikers at their homes, called upon employers at their offices, interviewed businessmen, met county and city officials, and attended two public meetings. The commissioner incorrectly assumed that the men were striking because they had thought the law had already gone into effect; however, that was untrue.[106] The lumbermen would not have struck because an unsatisfactory law was going to be enforced in September rather than June; rather they struck because the law was ineffective as written. The spirit of the law to make ten hours a legal workday was as the Knights noted, "evaded by the slave drivers of Michigan."[107]

In his formal report, Commissioner Pond, reinforced the idea that Thomas Barry was the real troublemaker.[108] Pond took at face value the sentiment of the mill owners that their workers were happy until Barry came to town. He directly quoted only those workers opposed to the strike. But, if everyone was so happy, why were they striking? According to Commissioner Pond, the strike was the result of an armed force of men intent on disrupting the labor of peaceful

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[105] Jeremy Kilar asserts that "mill owners throughout the valley found a valuable ally in Governor Russell A. Alger. A wealthy lumberman with several mills in northern Michigan and part owner of a Saginaw mill, Alger acted steadfastly in favor of his colleagues." Jeremy Kilar, *Michigan Lumbertowns*, 237.

[106] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125.

[107] "The Ten-Hour Law: Its Evasion by the Slave Drivers of Michigan," *Labor Leaf*, September 30, 1885.

[108] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125. Labor commissioners often saw themselves as influential in improving working conditions. Barbara Speas Havira notes the bias inherent in the annual reports in Barbara Speas Havira, "A Treasure and a Challenge: Michigan Bureau of Labor Reports," *Michigan History* 72 (January 1988), 36-43.

sawmill workers.[109] Commissioner Pond ignored the fact that workers were unhappy with working conditions and had attempted to reason with their employers in the past. Pond falsely asserted that the men who started the strike were armed. Pond's formal record of the strike left the impression that this was a one-time disturbance instigated by a rowdy labor leader, Thomas Barry who had duped the men. In other words, they were unmanned by a wily foreigner.

By July 22, 1885, the militia and the Pinkerton men, due to pressure from the community, had left the Saginaw Valley. Although the strike carried on into August, it had lost its steam, because lumber owners refused to negotiate with the strikers. The Bureau of Labor offered arbitration and suggested that workdays extend only to ten hours with a corresponding reduction in pay, unless the worker was making less than $1.50 per day.[110] The men would have their ten-hour day, but would not earn as much as before. Although some mills converted to a ten-hour day, mill owners negotiated new contracts for the upcoming year that skirted the ten-hour law. The major change for lumbermen came in the form of frequency of pay. Independently, mill owners negotiated with their employees often at the same rate as before, but with semi-monthly pay instead of monthly.[111] Gradually, the strikers returned to work.

The strike ended first in the Saginaw cities and then in Bay City where rebellion had begun. Once again, the Saginaw Valley was alive with the sounds of lumbering. Nationally, Americans waited for word of a definitive end to the strike. Unfortunately, the strikers never experienced a decisive triumph. The Knights of Labor reported the strikers' defeat, "The many

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[109] "Who is Responsible?," *Detroit Free Press*, September 30, 1885.

[110] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125. Table No. two of the report states $1.77 as the average wage of all employees.

[111] For information about the strike's end, see Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125.

labor difficulties in the lumber camp have been settled, and the men have gone to work on the terms demanded of them by capital, not because they thought those demands just, but because their extreme poverty compelled them to do so."[112] According to the *Detroit Free Press*, workers lost at least $350,000 in wages during the course of the strike and gained little.[113] Lumber barons, however, made money on the strike due to their market power. The Bureau stated in their formal report that it was "fair to believe that the effect of the strike was to them [mill owners] a large financial gain." Prices for wood and salt both increased due to continued demand and decreased supply. Salt prices went up at least ten cents per barrel, while lumber men were able to sell lower-grade lumber at the same prices as they had for higher-grade lumber before the strike.[114]

At the end of the strike, liberty of contract reigned and protection had been denied. Michigan's ten-hour law went into effect in September, but did little to actually protect workers from long hours. The *Muskegon Chronicle* reported on October 8, 1885 that the mills were still running on the eleven-hour system.[115] An owner of a large lumber mill, W.B. Rouse remarked that he "paid no attention" to the *Saginaw Daily Courier's* publishing of the ten-hour law and that he "did not know when it took effect."[116] Even if Mr. Rouse had paid attention to the law, a clause that allowed a worker freedom to contract his employment for a longer day negated any potential the law had to be effective. Representative Jeremiah D. Long told a *Detroit Free Press*

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[112] "Poverty Again Crushed by Wealth," *Labor Leaf*, September 30, 1885.

[113] "Who is Responsible?," *Detroit Free Press*, September 30, 1885.

[114] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125.

[115] "State News," *Muskegon Chronicle*, October 8, 1885.

[116] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 92-125.

reporter that he suspected that the mill owners would find a way to work their employees longer than ten hours.

> Long: Of course the mill men will evade the ten hour law. The law isn't good for anything anyway. I knew it when it passed, but there was no hope of getting it through in any other form.
>
> Reporter: Why is it good for nothing?
>
> Long: Because it provides that ten hours shall be a legal day's work, except where otherwise contracted. It won't be very hard to otherwise contract in every case. Now, in Massachusetts they have an absolute ten hour law.[117]

In September, mill owners sent around waivers to their employees encouraging them to cede their rights to a ten-hour day.[118] The Knights of Labor reported, "Men are now signing these contracts, forced by their necessities, in large numbers. They have no choice, only between these harsh, cruel and soulless conditions and suffering, want and perhaps starvation for themselves and their helpless families."[119] Lumber barons in Saginaw and Pinconning discharged men who refused to sign the waiver.[120] In Menominee, mill owners shut down their mills because lumbermen wanted to work only a ten-hour day.[121] In Alpena, Coleman, and Muskegon, workers went on strike in September for a ten-hour day without a reduction in

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[117] "Sayings and Doings," *Detroit Free Press*, September 16, 1885.

[118] At the Saginaw mills, men were given the choice between contracting for longer hours at their previous pay or ten hours at reduced wages. A vote was taken by many lumber barons and the men expressed a desire to have ten hours be a day's labor even if it meant reducing their wages. "The Ten-Hour Law: Mill Owners Making Arrangements to Comply with its Requirements," *Saginaw Evening News*, September 8, 1885.

[119] Ibid.

[120] "Masters of the Situation," *Detroit Free Press*, September 25, 1885.

[121] "Again the Strike: Mill Owners on the Menominee Shut Down their Mills—the Ten Hour Act Causes Considerable Trouble," *Detroit Free Press*, September 22, 1885.

wages.[122] The strikes were unsuccessful; mill owners avoided a ten-hour day and, as a Knight of Labor expressed, "set [an] example before outraged and starving men, smarting under a sense of wicked oppression."[123]

In January 1886, Thomas Barry faced trial in the Saginaw Circuit Court on criminal charges for conspiring and combining to induce persons to leave their employment for the purpose of securing higher wages or working less hours for the same pay.[124] Barry's defense attorneys argued that the Baker conspiracy act, under which Barry was charged, was unconstitutional and therefore asked the judge to dismiss the charges.[125] Judge Chauncy Gage gave Barry's defense team, the choice to proceed or to take the issue of constitutionality to the Michigan Supreme Court and delay the trial. After a brief recess, the defense team chose to go immediately to trial.[126] The defense thought it unlikely that the Supreme Court would rule the Baker Act unconstitutional. Barry's attorneys decided that if Barry was found guilty they could appeal the verdict on the constitutional question. On January 8, 1886, Francis Cook, Barry's lead

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[122] "Five Hundred Shingle Men out on Strike at Muskegon," *Detroit Free Press*, September 2, 1885. "Again the Strike: Mill Owners on the Menominee Shut Down their Mills—the Ten Hour Act Causes Considerable Trouble," *Detroit Free Press*, September 22, 1885.

[123] "The Ten-Hour Law: Its Evasion by the Slave Drivers of Michigan," *Labor Leaf*, September 30, 1885.

[124] The case files for the trial were destroyed in a courthouse fire. The name of the trial and detailed reporting of its events came from the *Saginaw Daily Courier*. *People v. Thomas Barry*, Saginaw Circuit Court, (1886).

[125] "A Motion to Quash Made in the Case of T.B. Barry in the Circuit Court," *Saginaw Daily Courier*, January 6, 1886.

[126] "The Motion Denied," *Saginaw Daily Courier*, January 7, 1886. Barry's defense team included L.C. Holden, F.W. Cook, F.L. Dodge, J.W. Turner, and W.D. Fuller

counsel, selected a jury. Jury selection was reportedly difficult, "none of the jurymen [were] residents of East Saginaw, and only one of Saginaw City."[127]

Members of the Saginaw Valley community carefully followed the trials. Witnesses for both sides gave testimony, nearly 100 persons, that led the jury to presume that Barry did not approach the mills with the intent to cause damage or to lead others in unlawful action. Newspapers and labor papers extensively reported courtroom happenings. Former Governor Josiah Begole wrote a letter of support to Frank Dodge, one of Barry's defense attorneys, stating, "I believe that he will triumph over his enemies and will stand up and be a greater terror to his enemies than ever before."[128]

In their closing address to the jury, Barry's defense team defended their client's manhood. William Fuller, defense attorney, argued that Barry had acted in a manly fashion when he urged strikers to, "keep sober, peaceful, stay in your homes and save up your money for your wives and children."[129] Fuller argued that "Barry came to prominence in this state because he tried to help men who earned their bread by the sweat of their brow and strove to elevate and raise their condition."[130] The courtroom audience burst into cheers and stomped their feet when Fuller referred to the strikers, who had "marched behind the flag for which brave men have died and

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[127] "A Jury Secured in the Barry Case," *Saginaw Daily Courier*, January 8, 1886.

[128] "The Barry Trial: Further Testimony Taken Yesterday Afternoon and Today," *Saginaw Daily Courier*, January 12, 1886.

[129] "Closing the Case," *Saginaw Daily Courier*, January 21, 1886.

[130] Ibid.

women wept. [Barry's] no coward."[131] Judge Gage told the trial observers that the courtroom was no place for applause and that they had to quiet down.[132]

On January 22, 1886, Judge Gage reiterated the substance of the charge to the jury, that Barry had conspired maliciously and eventually with violence to close the mills.[133] The jury deliberated overnight and came back the next morning to inform Judge Gage that they had found ten to two for Barry's innocence.[134] Barry was acquitted of all charges; the prosecution also dropped pending cases brought by other mill owners. Tom Barry addressed the jury: "I am glad to know that there are twelve men in Saginaw county who in the face of the opposition of men whose wealth aggregated millions displayed the courage to render a verdict for truth and justice."[135] In discussing the jury's courage, in other words, he affirmed their manhood. The Knights of Labor rejoiced in Barry's acquittal from criminal charges; their labor paper ran a front-page headline, "Barry Acquitted: The Industrial Oligarchy Fail in the Scheme to put Tom behind prison bars."[136]

The case of *Webber v. Barry* (1887) proved that the lumber barons were not finished with Thomas Barry. William Webber sued Barry in civil court to repair supposedly a glaring

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[131] "Closing the Case," *Saginaw Daily Courier*, January 21, 1886.

[132] Ibid.

[133] "Waiting for the Verdict: the Judge's Charge to the Jury in the Conspiracy Case," *Saginaw Daily Courier*, January 22, 1886.

[134] "Not Guilty! This is the Verdict Returned in the Barry Conspiracy Case," *Saginaw Daily Courier*, January 23, 1886.

[135] Ibid.

[136] "Barry Acquitted: The Industrial Oligarchy Fail in the Scheme to put Tom behind Prison Bars," *Labor Leaf*, January 27, 1886.

miscarriage of justice.[137] The civil case gave lumber barons the ability to get revenge on Thomas Barry and, as William Webber put it, exert "moral influence" over his actions.[138] William Webber, representing the Wickes' lumber mill, sued Thomas Barry, Charles Sherwood, Patrick Sinnet, and William Baroux for trespassing on his property. Webber sought over $10,000 in damages related to an incident at a saw-mill and salt-block. He alleged that Thomas Barry unlawfully entered his premises and allowed a mob to put out the fire beneath the steam engine. The loss of steam caused damage to the boiler and loss of income until the mill was running again. Saginaw Circuit Court first decided Webber's case. The circuit court judge, Chauncy Gage, ordered the jury to find in favor of Webber for at least $100; the jury awarded Webber $290.18. The defendants then appealed to the Supreme Court of Michigan to review the case; they contended that Gage had erred in his conduct over the trial.[139]

William Webber was a Saginaw attorney, politician, and businessman. He had served as mayor of East Saginaw and state Senator, and he was a noted Mason. He took a prominent role in the development of the salt industry in the Saginaw Valley. A supporter of Thomas Cooley for the United States Supreme Court, William Webber was a Gilded Age capitalist who viewed liberty of contract as a natural right of man.[140] In an interview given to the *Saginaw Daily*

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[137] *Webber v. Barry*, 66 Mich. 127 (1887).

[138] "Men and Politics," Thomas Barry Scrapbooks, 1886-1890, Bentley Historical Library, University of Michigan.

[139] *Webber v. Barry*, 66 Mich. 127 (1887).

[140] Thomas McIntyre Cooley, *Treatise on the Constitutional Limitations which Rest Upon the Legislative Power of the States of the American Union* (Boston: Little, Brown, and Co., 1883). Since Cooley was important to national jurisprudence, his work has received scholarly attention. For secondary work on Cooley's life and legal impact, see Jerome C. Knowlton, "Thomas McIntyre Cooley," *Michigan Law Review* 5 (March 1907), 309-325. For Cooley's political impact, see Paul Carrington, "Deference to Democracy: Thomas Cooley and His Barn-Burning

Courier, Webber asserted that because a contract was an agreement between men, a "manner of conducting business, this power of control is a part of the contract; it is one of the rights which every man interested has guaranteed to him by that provision of the constitution which forbids any law impairing the obligation of contracts."[141] Webber asserted that liberty to contract was a necessary part of industrialization and that contract alone should govern exchanges between men.[142] In a letter to Carroll D. Wright, the chairman of the United States Strike Division, he wrote, "The law cannot provide, in matters of ordinary employment, a rule to govern employer and employe [*sic*], except upon the basis of the ordinary civil code between man and man."[143]

In his charge to the circuit court grand jury, Judge Gage stated that Thomas Barry was guilty of trespass and that William Webber was entitled to recover damages against the defendants. Judge Gage ordered the jury to find for at least $100 in damages. Although testimony had proved that Barry told the group of strikers not to enter the mill, Gage maintained that Barry should have known that the group would start trouble and was therefore liable for the actions of the group. Although Gage had presided over the criminal trial where the jury found Barry innocent, he sought a different outcome in the second case. Judge Gage also acted

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Court" in *The History of Michigan Law*, ed. Paul Finkelman and Martin J. Hershock (Athens: Ohio University Press, 2006), 108-125.

[141] Newspaper clipping from April 26, 1885, scrapbook 1870-1891, box one, record group 10, William Webber papers, Eddy Local History and Genealogical Collection, Hoyt Library, Saginaw.

[142] William Webber's views prevailed among industrialists who sought government influence only when it benefited them economically. In matters of work conditions, industrialists did not want state intervention. As Henry Sage told his manager, "Employers know what they can afford to pay for the products of Labor and will pay all they can afford to." H.W. Sage to H.W. Sage and Co., Wenona, July 11, 1872.

[143] William Webber to Carroll D. Wright, August 11, 1894, William Webber papers, Eddy Local History and Genealogical Collection, Hoyt Library, Saginaw.

partially toward William Webber when he allowed the prosecuting attorney from Barry's criminal trial to serve as Webber's counsel. Barry's defense team appealed the award to the Michigan Supreme Court. Although Webber's counsel should not have served and although the judge blatantly erred by instructing the jury to find Barry guilty, the Michigan Supreme Court confirmed the decision of the Saginaw Circuit Court. [144]

In the Michigan Supreme Court's opinion, the justices found that Thomas Barry did not have a right to enter another man's property to seduce workers away from the job.[145] According to the court, Barry was an instigator and a trouble-maker. It was not the job of the Supreme Court justices to determine whether Barry was guilty of trespass; the Saginaw Circuit Court jury had made that decision and found Barry innocent. The Supreme Court was to rule on whether Judge Gage had erred by ordering an amount and allowing the prosecutor to defend.[146]

At issue, in part, was whether Thomas Barry and the other organizers had acted in a manner befitting working men. Justice Allen Morse maintained for the majority that although Thomas Barry had a right to go to a place of business, he did not have the right to interfere with an owner's privileges or property rights: "License is nevertheless considered revoked the moment the person so entering interferes unlawfully with our rights or our property."[147] Morse added, "It was none of his [Barry's]business whether the men working for plaintiff were satisfied to work 11 or 11 1/2 hours per day or not."[148] Morse thus sent a warning to strikers: "[H]e who goes

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[144] *Webber v. Barry*, 66 Mich. 127 (1887).

[145] Ibid.

[146] Ibid.

[147] Ibid.

[148] Ibid.

outside the law to obtain his rights, whether fancied or real, will find in the end that the law he has spurned or violated will yet, and in justice, compel him to respect it, by taking from him what he has gained in disregard of it, and forcing him to recompense those he has illegally damaged by his conduct."[149] Thomas Barry had to suffer the consequences of his actions, because William Webber had a right to be protected in his property. Absent from consideration in both the circuit and appellate courts was the ten-hour law. Also, the entire prosecution's case in both courts dealt almost solely with Thomas Barry and not the other less powerful, defendants, Sherwood, Sinnet, and Baroux.[150]

Justice Thomas Sherwood dissented. In his view, Judge Chauncy Gage had erred by giving the jury a minimum amount of damages to assess because Gage's mandate had forced the jury to find Barry guilty. Judge Sherwood was also concerned that Judge Gage had not allowed the jury to hear full information that would have helped to defeat the charges of trespass and conspiracy. Sherwood argued that if all testimony had been allowed it would have gone "far to exculpate him."[151] Most importantly, Gage had withheld facts when giving his charge to the jury. Sherwood stated, "It substantially directed the verdict against the defendants, and the error was prejudicial to the defendant Barry, at least, and must necessarily have had its effect upon the defense made by the others."[152] Sherwood called for a new trial, but the judgment against Barry was sustained.

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[149] *Webber v. Barry*, 66 Mich. 127 (1887).

[150] The other three defendants were excused early in the trial, because they did not possess the influence or power of Thomas Barry to enact change through law or the labor movement.

[151] *Webber v. Barry*, 66 Mich. 127 (1887).

[152] Ibid.

Even though the jury found Thomas Barry guilty in the civil trial, they awarded William Webber only a small portion of his stated damages. He perhaps did not care. When Webber was later asked about how the trial worked out he replied, "I got a judgment for either $300 or $400 not positive which, but I've never taken any steps to collect it. Wanted the moral influence more than the money."[153] Webber thus implied that he was trying to prove that Barry was wrong in trespassing and inciting workers to strike. But he lied when he said that he had not taken any steps to collect it. Webber's attorney threatened to jail Barry unless he satisfied the claim.[154] Barry had something to prove too—that workers had rights. He would not respond to an unjust verdict. When asked what he intended to do about the threat of arrest, Barry stated, "Nothing whatever, I have neither the money nor the inclination."[155]

The Barry trials and the 1885 Saginaw Valley Strike demonstrate the lumber workers' anger over assaults on their manhood. Americans have always valued the traditional right to property. As the nineteenth century progressed and the nation industrialized, courts interpreted the right of property, traditionally a bedrock right of white men, to include the right to contract. Fourteenth amendment jurisprudence evolved to include liberty to contract as a property right. The ability to contract the terms of employment for oneself were held sacred as privileges of manhood. The Knights of Labor noted, "The fundamental right of a man is the right to be

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[153] "Men and Politics, Thomas Barry Scrapbooks, 1886-1890, Bentley Historical Library, University of Michigan.

[154] "A Pound of Flesh: is What Thos. B. Barry Will Give Mr. Webber," *Saginaw Daily Courier*, December 27, 1887.

[155] Ibid.

himself; and this right is his sovereignty."[156] Manhood included not just independence to live one's life freely, but also ideas of headship over the family.

As industrialism burgeoned and workers migrated to cities, universal acceptance of wage labor in the wake of the Civil War led to increased emphasis on the workplace itself as a site of reform. In the industrial society of the nineteenth century, manufacturers paid wages for labor. Wage work meant that employees no longer owned the fruits of their labor; they owned only their ability to control the terms of employment. American laborers struggled to adapt to a new value system for work based solely on how much they were paid for a job, not on their skill, training, expertise, or experience. Wage work also affected Americans views of citizenship. Alice Kessler-Harris contends that wage work reinforced a new "economic citizenship" where economic status determined the extent to which a person could participate in the polity.[157] Working men found that important aspects of their manhood had been abridged by the wage labor system; many women came to be excluded altogether.

Society had designated the public sphere a place of action for men and the private realm a proper place for women. White men thus depended for their liberty on the right to own property, head their families, earn a living, gain education, participate in the political and legal process, and act fully as citizens. Although white men were not equally classed, they did enjoy privileges based on their sex alone. As industrialization advanced, moreover, white, working-class men found that many of the manly privileges to which they had formerly been entitled were no longer

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[156] "What is it to be a Slave?," *Labor Leaf*, September 30, 1885.

[157] Alice Kessler-Harris, *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th Century America* (New York: Oxford University Press, 2001), 5. Kessler-Harris looks at the way wage labor changed the political status of Americans. She finds that gender drives people's beliefs about citizenship and the labor force, amongst other matters. Kessler-Harris shows how the "gendered imagination" shaped public policy.

available to them. Workers worried about the extent of their liberty. A *Labor Leaf* reporter asked his readers, "What is it to be a slave? …it is to be a full grown man whose actual rights are those of a child only."[158] As is evidenced by the rhetoric of the Saginaw Valley strikers, they could not contract their labor fairly, could not make enough money to support their families, did not have time in the day to develop themselves socially or intellectually, and did not possess equal rights in relation capital.

Manhood clearly formed an important part of confrontations in Saginaw. Strikers saw the fight for protection as affirmation of their collective manhood. Saginaw workers clearly saw the fight to better working conditions as manly. The Knights of Labor encouraged man to achieve "his own Liberty," to establish "equality between himself and other men," and to find solidarity with like-minded brethren.[159] From childhood, men were ingrained to think of themselves as protectors, of families and of self. The Knights of Labor described Thomas Barry in his battle for the cause of labor as "manly, able, and fearless"; they endorsed "the manly and noble efforts of Hon. Thomas B. Barry in his vindication of the rights of labor."[160] When striking men fought for freedom, it was a natural course for their sex. Lumbermen in the Saginaw Valley, in other words, did not view protective labor legislation as unmanly; instead, they saw it as a way to ensure independence and headship.[161]

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[158] "What is it to be a Slave?," *Labor Leaf*, September 30, 1885.

[159] Ibid.

[160] "The Ten-Hour Law: Its Evasion by the Slave Drivers of Michigan," *Labor Leaf*, September 30, 1885; "Barry's Friends," *Labor Leaf*, November 11, 1885.

[161] Laboring men debated the hypocrisy of a system that afforded protection to industrialists in the way of tariffs, while denying their workers any type of protection.

Workers saw their independence eroded by an industrial structure that deprived them of wages and denied them a voice in employment relations. As one worker stated, while they were "utterly helpless," the law could provide them with power.[162] Another laborer queried, "Is it not the law that can give the people the power to protect themselves from assassins?" [163] A Bay City longshoreman wrote, "labor [is] a mouse invented as a plaything to a cat—capital is the cat."[164] Workers were tired of cat and mouse games in which employers reneged on promises to decrease hours of labor and increase wages. Moreover, making employers legally accountable would reduce the stranglehold that lumber barons had over the lower class. A moulder pointed out that employers made "paupers and prostitutes" of the working class; protective labor legislation would elevate the social and economic status of all men.[165]

Ironically, then, unionists aimed to increase control through state-sponsored protection. Workers knew they were dependent on the industrial machine. As the nineteenth century drew to a close, employers instituted more formal work rules that eroded the freedom of laborers and enshrined a paternalist structure. Often mill and mine workers lived in housing owned by their employers and shopped at their employers' stores. Employers instructed workers where to live, how to spend their money, and how to act. Since capital controlled medical care, a worker's life

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[162] "Set It All Down," *Labor Leaf*, June 16, 1886.

[163] "A Lover of the Law," *Labor Leaf*, May 19, 1886.

[164] "Dictionary for Workingmen," *Labor Leaf*, December 2, 1885.

[165] "A Moulder's Complaint," *Labor Leaf*, March 3, 1886.

was literally in his employer's hands.[166] White men had once been free to make such choices, but no longer. Being white and male in America no longer guaranteed authority or autonomy.

Unionists compared their present wage system to that of slavery, the very definition of emasculation and powerlessness. As laborers, they were dependent on their employers. In order to realize liberty, many workers found that solidarity with others increased men's power. Union men were tired of having "the inward knowledge of that which is great and holy, and to be constrained to do things that are small and base."[167] They were frustrated that they were "consciously capable of self-government, and at the same time, subject to the will of another person."[168] To secure liberty, workers struck the mill owners. Thomas Barry risked what freedom he possessed to fight for all men.

The lumber workers' battle for a ten-hour day provides part of the narrative of male workers' fight for protective labor legislation. Since wage work was a crucial aspect of manhood, gender constructs informed workplace confrontations. Lumbermen struck to control the hours that they worked. Capitalists used conspiracy laws to thwart lumber worker's attempts for control over work relations. In the Barry trials, the Michigan judiciary gave capital-friendly conspiracy doctrine more distinction than the labor-friendly ten-hour law. Since striking in the Saginaw Valley had failed to draw attention to the ineffectiveness of the law and enforce the ten-

[166] In the Saginaw Valley, a Catholic organization, Daughters of Charity of St. Vincent de Paul, opened a hospital affiliated to St. Mary's church of East Saginaw. The hospital was funded by lumber barons provided medical care to workers and their families.

[167] "What is it to be a Slave?," *Labor Leaf*, September 30, 1885.

[168] Ibid.

hour day, more working men would continue to press the issue of shorter workdays and adherence to the ten-hour law in the courts. The Saginaw strike and related events vividly illustrate a broader dilemma and struggle, one that involved workmen not just in the lumber industry, but elsewhere.

Chapter Two

'A duty we owe ourselves…we join together and form a compact for our own protection'[1]

Working Men's Struggle for Protection

The plight of the Saginaw lumbermen formed a chapter, not just in Michigan history, but in the history of worker's relationship to public power in the closing decades of the nineteenth century. Men, at least as much as women and children, sought protection in order to achieve control over their lives. Authority was a characteristic of manhood that was to be protected at all costs and one that could be preserved through protective laws empowering male workers. In Michigan, workers like night watchman Frank Bartlett and photographer Theodore Schurr provide additional illustrations of the complexities of this struggle and the courts' general intransigence on the topic of male protection. But the problem was anything but local.

Michigan law mandated ten hours as a legal day's work.[2] Frank Bartlett and Theodore Schurr individually sued for overtime pay. The decisions in the *Bartlett* and *Schurr* cases show a judicial response to two workers' efforts to claim property rights in labor.[3] The judiciary asserted that in the absence of a written contract, contract law governed work relations. In doing so, they placed the judicial branch as the supreme authority over employment affairs. Historically, property ownership was a right of man.[4] Even when women were accorded property rights, they

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[1] Bricklayers and Masons Preamble, Michigan Bureau of Labor and Industrial Statistics, *Annual Report*, 1884, 62.

[2] *Public Acts of Michigan*, 1885, no. 137, 154-155. This law had instituted ten hours as the legal hours of labor unless contracted otherwise.

[3] *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890); *Schurr v. Savigny*, 85 Mich. 144 (1891).

[4] Married women could not possess property in many states until the latter half of the nineteenth century. Norma Basch studies New York's married women's property acts focusing on feminist political reform movements to gain property for married women. Norma Basch, *In the Eyes of*

did not share equally in the use and enjoyment of those rights.[5] In the 1870s, the judiciary increasingly protected liberty to contract while tying the doctrine to property rights and a general ban on legislative interference.[6] The right to use property unimpeded by law became a substantive right protected by the 14th amendment.[7] However, since working men were not able to bargain with employers as equals, they were not able to freely contract their labor.

The decisions in the *Bartlett* and *Schurr* cases championed liberty of contract doctrine and invalidated hours laws for men unless their work was dangerous.[8] Through their discussion

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the Law: Women, Marriage, and Property in Nineteenth-Century New York (Ithaca: Cornell University Press, 1982). MaryLynn Salmon traces the struggle for property rights to colonial America, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986). Sandra VanBurkleo, *'Belonging to the World' Women's Rights and American Constitutional Culture* (New York: Oxford University Press, 2001) also explores the development of property rights for women.

[5] By tying liberty to contract to property rights, the courts kept property rights as part of the bastion of masculinity. Although women could own property by the end of the nineteenth century, they could not contract their labor freely so they did not share property rights equally with men. In *Bradwell v. Illinois* (1873), the Supreme Court mandated that the 14th amendment applied differently for women. Women could not pursue any vocation that they chose. The decisions of the Supreme Court in *Holden v. Hardy* (1898) and *Lochner v. New York* (1905) show that gender constructs greatly influenced the justices. In these cases, hours regulation for men was at issue. The court decided that hours laws for men were to be upheld only when the employment was dangerous. By validating hours regulation for women in any employment, but only for men in dangerous employment, the court enshrined gender as a defining factor for workplace protection.

[6] *Western and Electric Railroad Co. v. Bishop*, 50 Ga. 465 (1873). The majority opinion writer speaks of no right being more precious than the right to fix the terms of a labor contract.

[7] Edward Keynes discusses substantive due process and how freedom to contract was tied to property rights in *Liberty, Property, and Privacy: Toward a Jurisprudence of Substantive Due Process* (University Park: Pennsylvania State University Press, 1996).

[8] *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890); *Schurr v. Savigny*, 85 Mich. 144 (1891). The courts did not face criticism when validating hours laws for dangerous employment, because they were upholding the natural right to life. Although judges adhered to contract doctrine generally because it was considered a natural right of man, as Thomas Cooley contended, life would be accorded ultimate protection. Safety laws and hours laws for dangerous

of dangerous work versus non-dangerous work though, the judiciary revealed characteristics of manhood.[9] Their stance comported with other court opinions that deemed protective labor legislation unmanly. In *Godcharles & Co. v. Wigeman* (1886), for example, the court struck down a wage law stating that it was "an insulting attempt to put the laborer under a legislative tutelage which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States."[10] Working men faced a dilemma: they attempted to use protective labor laws to assert control, but the court stigmatized certain types of protectionism as unmanly.

By the 1880s, several bustling centers of industry had emerged in Michigan. Detroit was the largest, but Grand Rapids, Kalamazoo, Jackson, Saginaw, Bay City, Battle Creek, Muskegon, Port Huron, and Lansing were growing commercial cities. Michigan was the center of some of the nation's most important industries. Michigan had a thriving tobacco economy, which culminated in a cigar industry that earned Detroit the nickname of "Tampa of the north."[11]

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employment were generally validated. There is little discussion of state decisions regarding hours legislation.

[9] Gender constructs played a role in judicial decisions. Barbara Welke contends that white men possessed legal authority while others lay at the law's borders. She identifies "subject identities" of those others in society that was based on this authority. Barbara Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (New York: Cambridge University Press, 2010). Multiple meanings of gender coexisted and were shaped and reshaped by social beliefs, location, political agenda, and the legal system. See also, Gail Bederman, *Manliness and Civilization: a Cultural History of Gender and Race in the United States, 1888-1917* (Chicago: the University of Chicago Press, 1995). Bederman shows how social beliefs about gender differed based on race, social class, and location. Race especially affected gender constructs. Society viewed manhood differently for black men than for white men.

[10] *Godcharles & Co. v. Wigeman*, 113 Pa., 431 (1886)

[11] Willis Dunbar and George May, *Michigan: A History of the Wolverine State* (Grand Rapids: William B. Eerdmans Publishing Co., 1995), 409.

Numerous agriculture-centered industries operated in Michigan, such as sugar making, food preservation/canning, dairy, seeds, farming equipment, and cereals. Michigan was home to industry leaders of breakfast foods, Kellogg and Post.

The state's natural resources provided raw material for many successful industries. Because of its chemical industry, Michigan led the nation in pharmaceutical production. Michigan boasted copper, iron, and lumber resources, which spawned wood-related manufactures—among them, carriages, wheels, matches, toothpicks, windows, sashes, doors, vehicles, paper, and pre-fabricated homes. Manufacturers in Grand Rapids took advantage of lumber resources to create a nationally renowned furniture industry. Thanks to its water transportation network, ship building prospered. By the 1890s, Detroit shipyards launched the largest number of ships of any shipyard in the United States. Using Michigan's iron ore deposits, industrialists created railroad cars and stove companies.[12]

Michigan cities resembled industrial centers across the nation. Electricity lit prosperous areas, but not poor neighborhoods. Municipal parks provided recreational areas for those with access. Cities offered free elementary education, churches, and cultural institutions. Many workers turned to labor-centered fraternal lodges for lower-cost entertainment and socialization; these lodges often served as ground zero for labor organization.[13] Urban, working-class families lived in small cottages, apartments, or two-family homes (sometimes company-owned). When working families did enjoy indoor plumbing, it was limited to a small sink shared by everyone

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[12] For Michigan industry, see Dunbar and May, *Michigan: a History*, 409-412.

[13] National Industrial Conference Board, *The Cost of Living Among Wage-Earners*, Report #19, September 1921, Detroit, MI.

on an apartment floor.[14] Jacob Riis' portrayal of New York tenements applied equally to tenement buildings on the outskirts of Detroit, such as in Hamtramck. Riis wrote, "All the fresh air that enters these stairs comes from the hall-door that is forever slamming. The sinks are in the hallway, that all tenants may have access—and all be poisoned alike by the summer stenches."[15] City life highlighted social inequality.

In the 1880s, workers suffered not only poor living standards but dangerous environments. In 1883, after agitation by workers, notably the Knights of Labor, some legislative change occurred. Michigan lawmakers created a Bureau of Labor to collect data about the labor scene.[16] Bureau agents gathered information about hours of labor, workplace accidents, moral and mental attitudes, factory conditions, use of intoxicating liquors, home lives, strikes, and unionism.[17] In 1883, the legislature passed an act to protect the rights of laborers.[18] It provided that any judgment for personal services performed by laborers should not be stayed, but issued immediately. Furthermore, legislators amended this act in 1887 to allow workers to

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[14] On the life of workers, see Olivier Zunz, *The Changing Face of Inequality: Urbanization, Industrial Development, and Immigrants in Detroit, 1880-1920* (Chicago: the University of Chicago Press, 1982).

[15] Jacob Riis, *How the Other Half Lives* (New York: Scribner and Sons, 1890), 23.

[16] The first year, Bureau agents sent out a questionnaire that asked of its respondents their vital information, citizenship status, occupation, employer, conditions of employment, health, dependents, living conditions, financial information, and numerous other personal information. This questionnaire was inordinately invasive. Employees would have questioned if the form was going to be used against them. The first time that the Bureau sent out the questionnaire, it appeared that the answers had been falsified. After that attempt, Bureau agents mailed the questionnaire directly to the homes of workers and explained their rationale for gathering data. Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1884, 10-11, 82-178.

[17] *Public Acts of Michigan*, 1883, no. 156, 168-169.

[18] *Public Acts of Michigan*, 1883, no. 157, 169-170.

recover attorney fees if they won the entire case.[19] These acts together made it a little easier for workers to redress grievances against employers, but still limited them: the court had to award the total amount sued for or they would not be entitled to attorney fee reimbursement.

In the late nineteenth century, liberal-minded Americans were greatly concerned with industrial changes, especially those affecting workers. Politicians and reformers forged a new political climate which exalted the masculinity of the working class. Teddy Roosevelt and other politicians gained authority by emphasizing what Kevin Murphy calls "strenuous manhood," the idea that a true man was a strong, rugged worker who supported his family.[20] In a speech to a crowd in Syracuse, New York, on September 7, 1903, Theodore Roosevelt said, "Far and away the best prize that life offers is the chance to work hard at work worth doing; and this is a prize open to every man, for there can be no work better worth doing than that done to keep in health and comfort and with reasonable advantages those immediately dependent upon the husband, the father, or the son."[21] By stressing the wage-earning status of men, this frame of mind indirectly affected working men who fought for protective labor legislation. Laborers, too, connected work with manhood, describing those people they held in high esteem as manly.[22]

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[19] *Public Acts of Michigan*, 1887, no. 147, 160.

[20] Kevin Murphy, *Political Manhood: Red Bloods, Mollycoddles, and the Politics of Progressive Era Reform* (New York: Columbia University Press, 2008).

[21] Theodore Roosevelt, "Strength and Decency," primary speeches, Almanac of Theodore Roosevelt, http://www.theodore-roosevelt.com/trspeechescomplete.html, accessed July 21, 2012.

[22] See *Labor Leaf* discussions of Thomas Barry, "because of his manly, able and fearless battle for the cause of labor and the workingmen which he has so heroically waged in the recent past as their leader and champion." "The Ten-Hour Law: Its Evasion by the Slave Drivers of Michigan," *Labor Leaf*, September 30, 1885.

Society glorified individualism, which complicated matters for working men attempting to unionize. Indeed, many of the photographs of working men at the turn of the century glorified the rugged individuality of the male worker. Photographers, such as the Goodridge Brothers, posed mill workers with hazardous tools, such as saws, to show the intensity of industrial work. Photographs of workers show them with their sleeves rolled up to expose muscular forearms, a hint of sweat gleamed on their brows as they gazed fiercely at the photographer. When lumbermen were gathered for a group photograph at the Sample and Camp Mill, they were posed like school children for an annual class photo, lined up by height and divided into three or four rows.[23] In this manner, company photos undermined worker masculinity by portraying work teams similarly to school children. Images of men at work, by contrast, emphasized the ideal of the strong, individual man.

The legal system reflected social beliefs about individualism. Legislators, judges, politicians, and capitalists glorified a laissez-faire system in relation to business. Industrialists proclaimed the benefits of individuality in the economic system. Governmental interference in economic matters was limited beyond that necessary to protect property rights, maintain peace, assist vulnerable classes, and establish commercial standards. Unionists saw the law, however, as an appropriate place for collective action by society, especially if the law was used to protect natural or guaranteed rights.[24]

Men's economic class shaped their ideas of liberty. A Knight of Labor proclaimed, "It is natural to want to live; natural to want as good as we can get; and it is natural to get it if possible.

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[23] For examples of this type of photography, see appendices B, C, and D.

[24] For law and regulation in the Gilded Age, see William Novak, *The People's Welfare: Law and Regulation in 19th Century America* (Chapel Hill: University of North Carolina Press, 1996).

It is instilled in every human being, as is also the wish to be free."[25] Union men saw themselves as a class that needed to position itself against capital to achieve independence. A section foreman for Grand Trunk Railroad saw not only a need for protection, but also a basic breakdown in relations between the rich and the poor: "The rich are getting richer and the poor are getting poorer. The poor man is not protected. After a life of toil he drops into the grave, not from old age, but from want of proper protection and better wages."[26] Employers often belittled working men through paternalistic actions and policies that denigrated man's independence. The Knights of Labor stressed the problem of worker dependency: "We can only live by the will of our employers…here we lose our freedom, and human nature rebels."[27]

Working men thus recognized the power of protective labor legislation to liberate them. One worker urged Michigan legislators to: "adopt laws that [would] favor the laboring class."[28] Unions noted that current laws were insufficient to create an equitable, safe, working environment. "For its own interest," wrote one labor journalist, "government should look after the welfare of its laboring men."[29] Second, unionists argued that protection should not be left up to the individual employer: "If the government owned the labor saving machines instead of monopolies and corporations, it could restrict the hours of labor and regulate the production of necessaries according to our needs."[30] Employers maintained that the spirit of competition

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[25] "Government Employment," *Labor Leaf*, August 4, 1886.

[26] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1894, 377.

[27] "Government Employment," *Labor Leaf*, August 4, 1886.

[28] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1894, 372-377.

[29] "Government Employment," *Labor Leaf*, August 4, 1886.

[30] "Editorial," *Labor Leaf*, October 6, 1886.

would regulate workplace protection, but laborers knew that employers could combine together to set an industry standard that afforded little protection. Third, workers recognized that the judiciary did not protect workers. Cases involving master/servant relations almost always were decided in favor of the master.[31] It was necessary, therefore, to change the law regarding employer liability.

To gain protection, many Michigan workers agitated for numerous types of legal protection. When the labor commissioner asked a laborer how he could be paid more fairly, he answered "by good and wise legislation."[32] Union men tried to sponsor laws that would govern hours of work, workplace safety, employer liability, the type of pay allowed (U.S. currency), the frequency with which they were paid.[33] A worker noted to the Bureau of Labor, "It would be almost a new life to some to see money once more."[34] To protect their claims for pay against those of employers' creditors, they pressed for workman's lien laws that allowed them to be paid first if their employer became insolvent.[35] Licensing laws also served to protect workers by

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[31] For scholarship on master/servant laws, see Christopher Tomlins, *Labor Law in America* (Baltimore: Johns Hopkins University Press, 1992) and Robert Steinfeld, *Coercion, Contract, and Free Labor in the 19th Century* (New York: Cambridge University Press, 2000). Both Tomlins and Steinfeld maintain that white man's property right was tested by wage labor. Tomlins notes that it was a fallacy to call industrial workers "free labor" as they were not truly free, which was reflected in the body of law titled "master/servant."

[32] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 135-172.

[33] Many strikes included wage issues as basis for conflict, including the 1885 Saginaw Valley Strike and the 1884 lumber strikes in Oscoda and Au Sable. Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1885, 1886.

[34] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 135-172.

[35] The Michigan legislature enacted numerous lien laws. Each law was specific to an industry. For example, *Public Acts of Michigan*, 1873, no. 185 was a log-lien law. *Public Acts of Michigan*, 1887, no. 270, 369. This law regulated mechanics' liens.

professionalizing certain areas of employment and allowing them more control over their work environment.[36] A carpenter noted that "by every man being obliged by law to be master of his trade," a more equitable working atmosphere would arise.[37] Workers, many who were union members, saw labor legislation as necessary to elevate the status of male laborers. A printer noted, "If we reduce him [the worker] to the status of the brute, how can we expect him to be a man?"[38] Their present system brutalized laborers and, unless changed by law, would continue to erode their humanity. As a worker stated, "not until the laboring class is recognized will there by laws adopted in favor of them."[39]

Across the nation, some of the most critical labor laws pertained to hours worked. A machinist asserted that he thought "it would be better for every working man or woman if eight hours was a legal day's work."[40] Although wage, safety, lien, and licensing laws were important, hours laws affected workers more extensively and personally. For men, maximum workday legislation was generally categorized as hours for all laborers, hours for men in public works, and hours for men in dangerous occupations.[41] Many workers campaigned to reduce their hours

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[36] An example would be *Public Acts of Michigan*, 1899, no. 212, 328-329 that provided for the examination and licensing of barbers.

[37] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 135-172.

[38] "Humanity to Man," *Detroit Printer*, May 15, 1896.

[39] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1894, 372-377.

[40] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 135-172.

[41] Detroit passed an ordinance at the turn of the century that limited all workers for the city or its contractors to an eight-hour workday. This ordinance was challenged in *Attorney General v. Detroit*, 153 Mich. 525 (1908). In this case, the taxpayers filed an action seeking an injunction to restrain the enforcement of the ordinance. The circuit court found in favor of the taxpayers. The City of Detroit appealed. The Supreme Court of Michigan found in favor of the taxpayers

of toil, because "humanity to man, the welfare of society, and the best interests of the country, physically, morally, and intellectually, most emphatically demand shorter hours."[42] Laborers encouraged shorter working days partly to secure more leisure time to develop intellectually and bond with their families. A Detroit printer stated that he conducted chores in the morning, worked all day, and then arrived home dirty and tired. After he completed evening chores, he had just enough time to "kiss the kids and embrace the wife…no recreation, no time for thought, no time to read."[43] The banner of the International Typographical Union read, "We propose to sell to the employer eight hours out of the twenty four, and we will do as we please with the remaining sixteen."[44]

Working men, in other words, demanded control over their labor and freedom from employers. One way to do this was to limit their hours at work. Shorter hours would "develop [workers'] intellectual, moral, and social faculties."[45] "If the number of hours was reduced to nine instead of ten," a master builder stated, "the employer and employe [*sic*] would be as well satisfied with the results and the laboring man would have more time for culture and improvement."[46] Also, fewer hours reduced strain on their bodies. In relation to Michigan's ten-hour law, the Knights of Labor cited: "Considerations of health, of comfort, of mental and moral

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and stated that the eight-hour ordinance was inconsistent with the city charter, which required the letting of the contract to the lowest responsible bidder.

[42] "Humanity to Man," *Detroit Printer*, May 15, 1896.

[43] Ibid.

[44] Banner, *Union Printer*, 1906.

[45] "Editorial," *Labor Leaf*, October 6, 1886.

[46] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 135-172. The builder used the masculine spelling of employee in his writing as was standard at the time.

improvement, were controlling influences with them [legislators]." They avowed that "10 hours a day was enough for any man to work" and that it was "all that human nature in the long run could endure."[47]

Labor activists in Michigan started campaigning for hours legislation in the mid-nineteenth century. At first, they campaigned for an eight-hour day. Democrats endorsed the eight-hour movement in the 1860s: "They pledged themselves, in the interests of the workingmen, steadily to aid all measure which [would] abridge their hours of toil…improve their opportunities for intellectual and moral cultivation…ameliorate and elevate the condition of the laboring classes."[48] Democrats were the first political party in Michigan to recognize the labor movement; they introduced an eight-hour bill in the Michigan House of Representatives in 1867, but it did not come to a vote in the Senate until the last day of session. The bill got a cool reception; when it came up for a vote there were not enough members present to pass it, even if all voted in its favor. The Panic of 1873 undermined the eight-hour movement in Michigan; it dissolved by the end of the decade.

Starting in the 1880s, a concerted effort was put forth by Michigan unions, especially the Knights of Labor, for a ten-hour workday law. In the early 1880s, Michigan laborers' campaign for protective labor legislation gained political support from Governor Josiah Begole (1883-1885).[49] A Fusion party affiliate, Begole encouraged Michigan lawmakers to protect workers in

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[47] "The Ten-Hour Law," *Labor Leaf*, December 29, 1886.

[48] Appleton's Annual Cyclopedia, 1866, p. 508 as quoted in Carl Parry, "Labor Legislation in Michigan" (PhD diss., University of Michigan, 1909), 6.

[49] Most historical information about Josiah Begole is limited to encyclopedic references. Begole only served one term; his political party was short-lived, which may contribute to the lack of scholarly attention paid to this governor. He was a friend to laborers and reached out to Thomas

dangerous employment. In a message to the legislature, Begole noted that, "during the year 1881 there were 331 casualties to railroad employees in this State, of which 61 resulted fatally. The number of employes [*sic*] killed was one for every 286, and of injured, but not killed, one for every 71."[50] He recommended legislation that would preserve railroad employees from injury.

Safety laws for workers were a start towards better working conditions, but did not empower workers to negotiate hours of labor. Although Michigan laborers enjoyed some political support, largely they fomented change through concentrated striking activity and placement of union leaders into legislative and bureaucratic positions. The Knights of Labor reported that "the question of shorter hours is taking hold in Detroit. Although it may seem to have been neglected, yet the agitation has been quietly going on in the various unions and assemblies until the time was considered ripe for outside agitation."[51]

Michigan's labor commissioners served as both friends and foes to laborers seeking protective labor legislation. Legislators, governors, and opinion leaders carefully studied the Bureau of Labor's annual reports. In a study of late nineteenth and early twentieth century labor legislation, Carl Parry found that out of the twenty-five reports that the Bureau of Labor had issued by 1908, five or six directly influenced the Michigan legislature.[52] Labor commissioner,

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Barry during his trial for conspiracy in 1886. See George N. Fuller and Gleaves Whitney, eds., *Messages of the Governors of Michigan* (East Lansing: Michigan Historical Commission, 2004).

[50] Josiah Begole, 1883, in *Messages of the Governors of Michigan*, ed. George Fuller (Lansing: The Michigan Historical Commission, 1925), 478.

[51] "Eight-Hour Agitation," *Labor Leaf*, February 17, 1886.

[52] Carl Parry found that the reports of 1884, 1885, 1886, 1887, 1892, and possibly 1890 directly influenced the legislature to create labor legislation. See, Carl Parry, "Labor Legislation of Michigan" (PhD dissertation, University of Michigan, 1909).

John McGrath, cautiously supported broad labor legislation.[53] Although he encouraged laws regulating women's work, "any effort looking to the prohibition of the employment of women in the workshop or factor was beneficial and ought to be encouraged," McGrath did not believe that more laws were the answer to the problems of male workers.[54] He warned that the Bureau hesitated to interfere with the "natural laws of trade" as it could result in "interference with other natural law."[55] Although cautious to recommend further legislation, McGrath understood the need of workingmen to stabilize and advance their station in life. Like many others, though, he feared class legislation which "educated the people to regard it as the panacea for all trouble."[56] In 1889, in what was perhaps an effort to avoid more legislation, lawmakers authorized the Bureau of Labor to arbitrate disputes between employees and employers and inspect factories.[57]

To gauge the need for ten-hour days, Michigan's Bureau of Labor sent 1,084 questionnaires directly to workers in all major industries.[58] Laborers averaged eleven hours of work per day, six days a week. Half of the respondents felt overworked. A teamster responded, "The man who works by the month or year is more poorly paid than he who works by the day as

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[53] Some commissioners were much more supportive of labor; two commissioners hailed from labor organizations: Robinson (1891-1893) and McLeod (1905-1908).

[54] "The Labor Report," *Labor Leaf*, April 7, 1886.

[55] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1884, 198.

[56] Ibid., 199.

[57] *Public Acts of Michigan*, 1889, no. 238, 359-360.

[58] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 135-172. Of the 553 usable questionnaires that were returned by employees, the reports represented seventy-one different counties and eight-five different trades. Sixty-four percent of the respondents were native-born, they averaged 3 1/2 dependents each, and fifteen percent of them had wives or children who worked to help supplement the family income.

regards the number of hours worked. Being obliged to work an unreasonable number of hours each week, he is retained one half of the Sabbath day to do chores for which he receives no pay."[59] Twenty-three percent of the men thought that ten hours should constitute a day's work, while twenty-five percent thought eight hours. Many of the men who worked ten hours or less per day thought that no change was necessary.[60] The majority of the men testified that their work was dangerous or unhealthy and that they were not paid fairly.

In 1885, labor law activists achieved several triumphs. One law ensured that those laborers who worked on public buildings or public works would be reimbursed for their toil.[61] Another act provided for the incorporation of societies to promote the interests of trade and labor.[62] The two most important acts of 1885, however, dealt with hours of work. Public Act 39 regulated the employment of youth and women by limiting the hours of labor to ten hours per day and sixty hours per week. The law also called for an hour-long lunch period, seats for female employees, and school attendance for children under fourteen years of age.[63] In a separate act, Public Act 137, Michigan legislators limited the hours of work for men to ten hours a day and sixty hours a week, but the law for men did not guarantee limited hours as it contained

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[59] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 135-172.

[60] Ibid.

[61] *Public Acts of Michigan*, 1885, no. 45, 42."An act to insure payment of wages earned and for materials used in constructing, repairing, or ornamenting public buildings and public works."

[62] *Public Acts of Michigan*, 1885, no. 145, 163-164.

[63] *Public Acts of Michigan*, 1885, no. 39, 37-38.

a liberty to contract clause that negated its effectiveness.[64] The Bureau of Labor even provided a standard contract agreement for employers to use to negate the law.

Denied legal protection and incapable of exercising self-ownership, working men plainly sought justice through the legal system. The Knights of Labor encouraged members to elect judges that would advance the cause of labor: "It is useless to enact good and necessary laws unless competent and proper men are upon the benches of the courts to enforce them."[65] Laborers then could use the court to enforce existing protective labor legislation. Union men, in fact, threatened to use their vote to get protection. "It is a great scheme," wrote the *Labor Leaf's* staff, "but the laborers don't look at it in the same light, and unless they find actual protection they will be apt to vote independently in the future."[66] Men had "devoted the best years of their youth to acquire a knowledge of their trade for the support of manhood" and aspired to "preserve [their manhood] from all violation and encroachment."[67]

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[64] Although the legislature did not distinguish between male and female workers in the second ten-hour law, legislators did enact two types of ten-hour laws in the same year. The ten-hour law for women and children omitted a "freedom to contract" otherwise clause indicating that women did not equally share the freedom to contract their labor. *Public Acts of Michigan*, 1885, no. 137, 154-155. "The people of the State of Michigan enact that in all factories, workshops, salt blocks, saw-mills, logging or lumber camps, booms or drives, mines or other places used for mechanical, manufacturing, or other purposes within the State of Michigan, where men or women are employed, ten hours per day shall constitute a legal day's work, and any proprietor, stockholder, manager, clerk, foreman, or other employers of labor who shall require any person or persons in their employ to perform more than ten hours per day, shall be compelled to pay such employes [*sic*] for all overtime or extra hours at the regular per diem rate, unless there be a contract to the contrary. That in all contracts, engagements, or agreements to labor in any mechanical, manufacturing, or other labor calling, where such contracts or agreements are silent, or no express conditions specified, ten hours shall constitute a day's work."

[65] "The Ten-Hour Law," *Labor Leaf*, December 29, 1886.

[66] "More Protection," *Labor Leaf*, March 10, 1886.

[67] Michigan, "Preamble of Bricklayers and Masons Union", Bureau of Labor and Industrial Statistics, *Annual Report*, 1884, 62.

Legislators had empowered Bureau of Labor agents to enforce labor laws, but inspectors did not enforce the ten-hour law. In 1907, Carl Parry found several Bureau inspectors who did not even know about the law. He also found that the law was not being respected in retail stores and was unknown to union officials of the clerk's union of Detroit.[68] Without bureaucratic enforcement of the law, some working men looked to the courts to validate their claims to a ten-hour day. Two cases concerning the ten-hour law came before Michigan's Supreme Court: *Bartlett v. Street Railway* and *Schurr v. Savigny*.[69] In both cases, the judiciary interpreted the law as applicable only to dangerous employment.

Frank Bartlett's case merits close scrutiny. Bartlett was a night watchman at the Cherry Street Barn in Grand Rapids. The Street Railway Company of Grand Rapids, a horse street car railway that employed a large number of men, ran the barn. Bartlett had previously worked for the company and had ended his employment because of long hours. One day he was walking along the street and encountered his former manager, Daniel Campbell. Campbell asked him if he was looking for employment. Bartlett responded that he might be interested, but not if he had to work long hours. Campbell introduced Bartlett to the hiring manager, John McNabb, who stated that there would be less work than before.[70]

Frank Bartlett started employment with the Cherry Street Barn on December 3, 1888. He did not sign a written contract, but he and the hiring manager, McNabb, forged a verbal contract. The two men did not discuss exact hours to be worked, only that the hours would be fewer than

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[68] Parry, "Labor Legislation in Michigan," 199-200.

[69] *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890) and *Schurr v. Savigny,* 85 Mich. 144 (1891).

[70] Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1890). *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890).

they had been when Bartlett had been previously employed by the company. McNabb guaranteed Bartlett $1.35 per night. When Bartlett commenced employment, he was not informed as to how many hours constituted an average working day, so he presumed that Michigan's ten-hour law would take effect. He was to be paid twice monthly. Bartlett consistently kept track of his hours; every day, he logged in a notebook the number of hours that he worked over ten. The railway company fired Bartlett on September 19, 1889. After the termination of his employment, Bartlett sued for over-time pay.[71]

In the course of his employment, Frank Bartlett worked 3,750 hours, which was 860 hours over the ten-hour day set by law.[72] Bartlett had not contracted to work more than the standard ten-hour day; thus, he sought pay for all hours worked over that limit.[73] Justice Marsden Burch of the Kent County Circuit Court found in favor of Bartlett and ordered the Street Railway Company of Grand Rapids to pay over-time payment of $110 (approximately 13 cents an hour).[74] The railway company appealed and the case went to the Supreme Court of Michigan.[75] The witnesses for Bartlett were all employees of the company who could have lost their jobs if they testified against their employer. Bartlett's employer questioned why he had not questioned his pay before his dismissal. Bartlett testified that he kept track of his hours from the

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[71] Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1890). *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890).

[72] Brief of Complainant, Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1890).

[73] *Public Acts of Michigan*, 1885, no. 137, 154-155. This law had instituted ten hours as the legal hours of labor unless contracted otherwise.

[74] Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1890).

[75] *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890).

first day and had always planned to ask for over-time pay.[76] Bartlett never gave a sound reason as to why he waited until his dismissal to ask for the over-time pay, but he may have felt threatened that he would lose his job if he demanded overtime while still employed.[77]

Frank Bartlett claimed that he did not know that by accepting bi-monthly pay he was waiving his right to additional pay for hours worked over ten. On the last day that he received pay, paymaster Hanchett specifically told him that accepting this pay meant that he had been paid in full for all work done.[78] Hanchett had not previously made this statement on payday. The Street Railway company argued that Bartlett should have assumed the same contractual stipulations during his second term of employment as he had in the first, even though a verbal contract existed where both parties agreed to fewer hours. The Michigan Supreme Court affirmed the company's argument that since the work was essentially the same Bartlett should have assumed the same terms of work were in effect. The justices maintained that since Bartlett knew normal business practices in the railway industry, he should have assumed that his work would require more than ten hours a day. The bench disregarded Frank Bartlett's verbal contract

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[76] Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1890). *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890).

[77] Since Bartlett had recorded his hours of work from his first day, he may have anticipated that the company would skirt the ten-hour hour. He had not signed a contract, so he may have been consciously testing the ten-hour statute. There is some evidence to support this theory. Bartlett testified in a co-worker's case, a man named Hopkins. Hopkins sued Street Railway for overtime and lost. Bartlett's testimony about the company had not been favorable and Bartlett's attorney conjectured that the Street Railway Co. had fired Bartlett in retaliation for his testimony in the Hopkins' case. Since no known records exist to give additional insight into Bartlett's mentality at the time, one can only speculate that Bartlett and Hopkins were working together in some aspect to test the ten-hour law. Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1890). *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890).

[78] Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1890). *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890).

with McNabb to work fewer hours than before. In fact, the decision ignored the statute, which stated that when "no express conditions [were] specified, then ten hours constituted a day's work."[79]

Although the law exempted domestic and farm work, the Street Railway Company brought into question whether the nature of work altered work limitations.[80] In the Street Railway Company's brief, their attorneys asserted, "In this case the plaintiff worked in no mechanical or manufacturing employment, but as night-watch in one of the defendant's barns. It is a matter of common knowledge that a night-watch must necessarily be on duty longer than day workmen in factories, shops, mills, etc. and that his duties are not of that laborious nature to require that his hours be limited as theirs."[81] The company thus attempted to bend the law to imply that ten hours only applied to laborious work. The court accepted this argument. Indeed, by ruling in favor of the Street Railway Company, the judiciary narrowed Michigan's ten-hour law to laborious or dangerous work. But the ruling did more; by protecting only men in dangerous employment, the court passed judgment on what constituted masculine work—that which could exhaust or kill you. Men who did not engage in what would have been called "manly" labor were not given legislative relief. Eight years later, much the same doctrine regarding hours of labor in dangerous or laborious employment appeared in *Holden v. Hardy* (1898).[82]

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[79] *Public Acts of Michigan*, 1885, no. 137, 154-155.

[80] Ibid. Sec. 5 of the statute states "Nothing in this act shall be construed to apply to domestic or farm laborers, or other laborers who agree to work more than ten hours per day."

[81] Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1890). *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890).

[82] *Holden v. Hardy*, 169 U.S. 366 (1898).

Street Railway's attorneys brought into question the arbitrary quality of the hours law. They argued that the railroad industry could not be governed by the same law as other fields of work, because of the nature of railway work. As the company's attorneys explained, "Many fields of labor, by reason of their nature and kind, cannot be well governed by arbitrary rules as to hours, and steam and street railways are foremost among them."[83] In 1890, in fact, Michigan lawmakers were contemplating a law that would specifically limit the hours of work for railway companies. The legislature had already enacted several laws in an attempt to make the railway industry safer.[84] Two of Michigan's earliest labor laws pertained to the rail industry. Three years after the *Bartlett* case, Michigan legislators regulated the length of time for railroad employees, and two years later required that street railway companies protect their employees from inclement weather.[85]

Michigan judges denied Bartlett's petition to recover his pay. In Judge Claudius Grant's view, "He contracted with knowledge of and with reference to the invariable custom and rule of the defendant, and to the limitation of authority given to its officers. His contract therefore was to work without reference to the number of hours to constitute a day's work."[86] Since the law specifically stated that ten hours was a day's work unless there was a contract otherwise,

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[83] Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1890).

[84] *Public Acts of Michigan*, 1885, no. 147, 165-166. This law required safety couplers on railroad cars. *Public Acts of Michigan*, 1887, no. 118, 134. This act provided for the better protection of the lives of passengers and employees on railroad trains.

[85] *Public Acts of Michigan*, 1893, no. 177, 276. *Public Acts of Michigan*, 1895, no. 9. The Michigan Supreme Court did not invalidate these laws, which reinforces the idea that the justices were attempting to enforce gender constructs in the *Bartlett* case.

[86] *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890).

Bartlett's claim should have been granted, but this did not happen. The judiciary essentially invalidated Michigan's ten-hour law for industries traditionally associated with long workdays.

Judge Grant also implied that Bartlett was trying to swindle the company, because he did not ask for overtime throughout the nine months of his employment. In Grant's words, "He kept silent as to his rights, if he had any, when he should have spoken. The law now estops him from speaking. Law is founded in common sense and common honesty. Measured by these principles, plaintiff's claim is absolutely destitute of merit or legal standing."[87] The court expressed doubt that Bartlett even understood the scope of the law or contract making. Indeed, the bench came close to excluding night watch security from the scope of the law. "It is very doubtful if the statute covers employment such as the plaintiff was rendering," Grant asserted, "but upon this we express no opinion."[88] By assaulting Bartlett's character, intelligence, and honor, Judge Grant assaulted his manhood.

Bartlett v. Street Railway was not the only lawsuit before the Michigan Supreme Court involving the ten-hour law. In 1891, the Court heard a plea from a laborer for over-time wages in *Schurr v. Savigny*.[89] A photographer, Theodore Schurr, had contracted to work for one year for the defendants, Frank Savigny and Henry Christmas, taking, finishing, and retouching photographs. Like Frank Bartlett, Theodore Schurr kept a detailed record of the hours that he worked each day. Schurr completed his contract, but was paid a day late for the last two weeks of his pay. When his pay was tendered, he refused to sign a receipt stating that he had been paid

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[87] *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890).

[88] Ibid.

[89] *Schurr v. Savigny*, 85 Mich. 144 (1891).

in full. Instead, his attorney presented a claim to his former employers for the last two weeks' pay and for work done on Sundays, during his vacation, and over ten hours per day.

The Ingham Circuit Court first heard the case and awarded Theodore Schurr pay for work performed over ten hours and during his vacation.[90] The Michigan Supreme Court reversed the Ingham court's decision. The justices ruled that Michigan's ten-hour law did not apply to the practice of photography, although the law did not exclude that profession, because photographers necessarily had to work odd hours. A photographer did not work his hours in one shift; he worked for a few hours one day in the morning and a couple of hours in the evening when the sunlight was good. Specifically addressing the intent of the Michigan legislature, Justice Charles Long stated that "this statute was not intended by the Legislature to apply to this character of service."[91] Judge Long warned that if the court were to grant Schurr's claim, the law would apply to store clerks who were employed at odd hours.

In effect, Michigan's judiciary contended that jobs performed seasonally, like farming, were inherently different than other jobs, but the law specifically included some seasonal industries, like lumbering. The justices drew a line between employment in retail or photography, which were passive pursuits, and strenuous labor done in prescribed shifts. Judge Long maintained that the law was intended to apply to "factories, workshops, saw-mills, logging and lumbering camps, booms, drives on the rivers, mines, and such places where the mechanical and manufacturing industries of this kind are carried on."[92] Significantly, the protected areas of

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[90] *Schurr v. Savigny*, 85 Mich. 144 (1891).

[91] Ibid. The Court based their ruling on section five of the law, which exempted domestics and farm laborers from its protection.

[92] *Public Acts of Michigan*, 1885, no. 137, 154-155.

employment that Long listed were not fields in which women were employed—among them, retail, domestic service, and farm labor. The court thus determined not only what constituted dangerous labor, but what represented manly labor.

As with the *Bartlett* case, Schurr's contract did not stipulate hours to be worked. Michigan's ten-hour law specifically stated that "where such contracts are silent…ten hours shall constitute a day's work."[93] On this point, the Michigan Supreme Court remade the law. In both the *Bartlett* and *Schurr* cases, the contracts were mute on the subject of hours. Because the nature of employment was deemed relatively safe, the judiciary set a standard that limited the effectiveness of protective labor legislation for men. Male laborers were not protected under the ten-hour law unless they worked in a dangerous industry or possessed a contract that listed ten hours as a day's work. Hence, Michigan's Supreme Court foreshadowed a national trend that hours of work for men should not be generally limited, but limited only when the nature of work was dangerous or laborious.

Labor activists found that protection was more easily gained when safety was at stake. Across the nation, states implemented hours legislation for dangerous industries, especially mining. Michigan did not pass a law limiting hours of labor specifically in mines, but it did institute a law that regulated the length of time for railroad employees; ten hours within twelve hours constituted a day's work for steam, surface, and elevated railroads by 1893.[94] Senator Park introduced the bill to the Michigan Senate in 1891. Park intended the law to regulate the hours of labor on street surface railroads. The bill was supported by the Committee on Labor

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[93] *Public Acts of Michigan*, 1885, no. 137, 154-155.

[94] *Public Acts of Michigan*, 1893, no. 177, 276. The law also stated that any railroad worker who has worked twenty-four hours must take off eight hours before returning to work.

Interests.[95] The original act specified ten hours within twenty-four with at least one-half hour for meals. A man could not work more than six days in a row.[96]

The Michigan Supreme Court's decision in the *Bartlett* case closely aligned with Thomas Cooley's arguments about legislative interference with liberty of contract.[97] Invalidating hours legislation for men was part of a nation-wide legal current that designated such bodies of law as class legislation. In 1925, social scientist Elizabeth Baker noted that "labor laws have most frequently been declared unconstitutional" on the grounds of "restriction of the liberty of contract which is implied in the property right," class legislation, or deprivation of equal protection of the law.[98] By effectively changing the ten-hour law to apply to dangerous employment only, the decisions in *Bartlett* and *Schurr* clearly placed the judiciary in control of workplace disputes.

Michigan's law restricting the hours of work for railroaders was not innovative. Across the nation, state legislatures enacted laws regarding hours for dangerous employment. In 1898,

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[95] "Park's Bill Regulating the Hours of Labor of Railway Employees," *Detroit Free Press*, March 21, 1891.

[96] Barbara Welke examines over 500 cases involving injuries from railroad trains or street cars. She explores how gender constructs influenced verdicts in these cases. Her study of verdicts in accidental injury cases showed that the courts expected all men and black women to protect themselves, while white women were in need of protection. Barbara Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865-1920* (New York: Cambridge University Press, 2001).

[97] *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890). In 1890, the California Supreme Court struck down a Los Angeles ordinance for an eight-hour day for public workers citing Thomas Cooley as the authority and stating that the law interfered with liberty to contract. *Ex parte Kuback*, 85 Cal. 274 (1890). In 1894, a Nebraska court (quoting Cooley) struck down hours legislation, arguing that an eight-hour day for workers violated freedom of contract because it was class legislation. *Low v. Rees Printing Co*., 41 Neb. 127 (1894). Thomas Cooley was no longer on the Michigan Supreme Court by the time of the *Bartlett* trial.

[98] Elizabeth Baker, *Protective Labor Legislation* (New York: Longmans, Green, and Co., 1925), 220.

Utah workers saw a glimmer of hope when the Utah legislature instituted an eight-hour day for miners. The validity of the law was questioned by a mine owner. The case made its way to the United States Supreme Court where the judges acknowledged that employees and their employers were unequal and concluded in *Holden v. Hardy* that the state could use its police power to protect the welfare of male workers.[99]

Judicial protection for men, however, did not last long. In *Lochner v. New York* (1905), the United States Supreme Court decided a case involving a New York law that limited hours of work for bakers to ten hours per day and sixty hours per week.[100] In a sharply divided opinion, the United States Supreme Court invalidated the New York law on liberty of contract ground. The bench decided that the state had no authority to interfere with the liberty of bakers by determining their hours of labor. A state could only limit labor negotiations to promote the health, safety, or morals of workers capable of assuming risk for themselves.[101] The decision in the *Lochner* case showed the extent to which nineteenth century and early twentieth century jurisprudence protected liberty of contract; only when safety was undeniably at issue would protective labor law be approved for men.

Although the federal judiciary denied hours protection for men as a class, the rulings had the desired effect of fomenting change. As more employers came to adopt a ten-hour day, activists found it easier to campaign for an eight-hour work day. Workers changed their justification for working fewer hours to include the possibility that it would relieve unemployment. A twenty-four hour day could easily be divided into three shifts of eight hours,

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[99] *Holden v. Hardy*, 169 U.S. 366 (1898).

[100] *Lochner v. New York*, 198 U.S. 45 (1905).

[101] Ibid.

which would allow factories to work around the clock and increase the number of laborers working full-time. A machinist stated, "There are too many workers in the country with the machinery there is in use for all to find work at the present hours of employment."[102] Another employee told the labor commissioner, "Go ahead with your eight-hour work day and give more people work."[103] The *American Craftsman*, a Detroit labor paper, printed several articles encouraging working men to give up time so that other men could be hired. Writers worried that only certain classes of laborers would get an eight-hour workday, which would further heighten working-class discord. The paper therefore urged all unions to shut down industry until eight hours was a standard day's work.[104]

Consumerism provided another justification for a shorter workday. Rosanne Currarino found that, when the dynamics of the second Industrial Revolution drove most American workers into permanent wage labor, citizenship was redefined to reflect consumerist principles.[105] She contends that Samuel Gompers emphasized wages, hours, and benefits to stake a claim to consumerist citizenship. Hours legislation therefore would have given workers more time to shop, assuming that they had enough money to purchase goods. In an *American Craftsman's* article about a shorter workday, a worker stressed that more people working would

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[102] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 135-172.

[103] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1897, 196.

[104] "Eight-Hour Day," *American Craftsman*, August 7, 1897. "Condition of Workmen," *American Craftsman*, September 18, 1897.

[105] Rosanne Currarino, *The Labor Question in America: Economic Democracy in the Gilded Age* (Urbana: University of Illinois Press, 2010), 87.

enhance purchasing power.[106] Customers held power. If laborers could purchase more goods, they would exert more control over the American economy.

In its 1896 annual report, the Bureau of Labor found that over 75% of men questioned favored an eight-hour work day. Seventeen percent of them were willing to take a corresponding reduction in wages to work fewer hours.[107] Employers generally wanted the hours of work to remain as they were. Only fifteen percent of the 126 manufacturing establishments surveyed by the Bureau of Labor favored an eight-hour day with the same pay as before. A manufacturer reasoned that reducing hours of labor would raise the price of goods, while reducing the morals of its workers, ostensibly because workers would have more time to engage in vice. "We do not believe the same wages can be paid for eight hours as for ten," the manufacturer testified, "unless prices for all our products are advanced… . We also believe that many men are better off with ten hours' work than eight from a moral standpoint."[108]

Michigan workers gathered political support from Governor Hazen Pingree.[109] As a former mayor of Detroit, Pingree had battled for the common man, calling for municipal ownership of gas and light companies, lower street railway fares, arbitration in strikes, and an eight-hour day for city workers. His efforts culminated in many reforms. When entering his

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[106] "A Shorter Workday," *American Craftsman*, July 31, 1897.

[107] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1896, 196-199.

[108] Ibid.

[109] The best work on the life of Hazen Pingree and his influence as a social reformer is Melvin Holli, *Reform in Detroit: Hazen S. Pingree and Urban Politics* (New York: Oxford University Press, 1969). Hazen Pingree was a popular mayor in Detroit. As the owner of Pingree Shoes and Boots, his employees found him to be a fair boss who listened to their demands (after they went on strike). Detroiters saw him as a good man who generally looked out for the welfare of the working class. Businessmen were not as fond of Pingree and his reforms. In an attempt to win support for McKinley as president and to keep better control over Pingree's actions, industrialists backed his candidacy for the 1896 gubernatorial election.

second term as governor in 1889, Pingree addressed the legislature in support of an eight-hour work day. He stated that it was his firm conviction:

> "that eight hours a day is enough to require a man to work for his living.… and it is doing only simple justice to liberate them from the factories and workshops these two additional hours in order that they and their families may enjoy some of the advantages and real pleasures of life. It is your especial privilege and duty to bring the so-called "merchant princes" and "captains of industry" in this country to a realization of the fact that our laboring men are something more than tools to be used in the senseless chase after wealth.[110]

By the end of the nineteenth century, the ten-hour work day was standard in Michigan factories, workshops, and mines.

Safety legislation generally secured judicial approval. Unlike other forms of protective labor legislation, safety laws regulated the workplace, not worker/employer relations. Factory laws did not interfere with contract rights and reinforced the sanctity of life. Michigan legislators, at the behest of laborers and the Bureau of Labor, enacted numerous safety laws. Although many of the progressive-era labor laws protected children and women, several of the laws specifically improved the quality of working men's lives. In 1887, the legislature enacted an emery blower statute.[111] This law required exhaust fans to carry dust away from polishing wheels. It was the first law in Michigan that attempted openly to regulate the conditions of employment for adult men in factories. The same year, the legislature passed a mine inspection act, which empowered mine inspectors to condemn dangerous places.[112] The judiciary validated

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[110] Hazen Pingree, Address to the Legislature, January 4, 1889, in *Messages of the Governors of Michigan,* ed. George Fuller (Lansing: The Michigan Historical Commission, 1925), 141.

[111] *Public Acts of Michigan*, 1887, no. 136, 150-151.

[112] *Public Acts of Michigan*, 1887, no. 213, 252-253. In 1899, the legislature passed a coal mine act, which provided for "the protection of the health, lives, and interests of coal miners and Michigan." *Public Acts of Michigan,* 1899, no. 57, 93-94.

safety laws in order to help male breadwinners; the state would need to ensure that employers kept them alive and able to produce.

Unionists and reformers supported safety laws that benefited all workers. To be sure, Michigan legislators passed a law that regulated child labor, but also called for safety implements, such as hoisting shafts, ventilation, lighting, and well-holes, to protect the "life and limbs of those employed."[113] But they also adopted an employment act of 1893 to protect all workers.[114] Although geared towards regulating the employment of women and children, the law required rubber treads on stairs and fire escapes. That same year, lawmakers enacted another law which called for the protection of "toilers against unjust demands of labor."[115] Employers could no longer force employees to give to charities and could not deduct wages without workers' consent. Perhaps the most effective of the manufacturing-related acts was the factory inspection act of 1895.[116] This act provided for the inspection of all manufacturing establishments and workshops in the state; subsequent amendments expanded its protective power. Upon hearing of Senatorial debate over the factory inspection law, a laborer, Frank McPhilips, told Senator Jewell, "If the pious men and women of the state knew a tithe of the evils that exist in uninspected factories and workshops they would drop for a day at least their

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[113] *Public Acts of Michigan*, 1889, no. 265, 398-399.

[114] *Public Acts of Michigan*, 1893, no. 126, 210-211.

[115] *Public Acts of Michigan*, 1893, no. 192, 309-312. The court narrowly interpreted this law to include as unjust only the demands enumerated. Catherine Fisk explains that in the pre-New Deal state that the "judiciary occupied a proportionally larger share of the policymaking and administrative function than it does now." Catherine Fisk, "Still Learning Something of Legislation: The Judiciary in the History of Labor Law," *Law and Social Inquiry* 19 (Winter 1994), 158.

[116] *Public Acts of Michigan*, 1895, no. 184, 342-343.

reform fads and make their influence felt in a substantial way at Lansing."[117] Working men found safety laws acceptable measures of state control, because the state was not attempting to usurp worker's attempts to bargain equitably with employers. The state was instead controlling employers.

Into the new century, legislators enacted other safety laws that further enhanced existing laws or called for stricter inspection and fines. In 1907, lawmakers brought foundries under the umbrella of protection when they passed an act providing for the regulation and inspection of plants where metal castings were made.[118] Michigan laborers fought valiantly for control over their working conditions.[119] Although workers were largely denied protection in the manner of hours legislation, their fight for safety laws proved much more productive. Specific protective laws also changed the way that they could organize. Furthermore, the legislature enacted laws to protect toilers against unjust demands of employers, gave workers the right to choose their own life or accident insurance companies, and required pay with American currency.[120]

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[117] "Local Labor Notes," *Detroit Free Press*, March 3, 1895.

[118] *Public Acts of Michigan*, 1907, no. 152, 195-196.

[119] Carl Parry notes that organized labor played a principal role in the efforts for factory legislation. Carl Parry, "Labor Legislation in Michigan" (Ph.D. dissertation, University of Michigan, 1908), 58.

[120] *Public Acts of Michigan*, 1895, no. 192, 357-358. The law stated that employers could not make employees give to charity and could not deduct wages without consent. *Public Acts of Michigan*, 1895, no. 209, 384-385; *Public Acts of Michigan*, 1897, no. 221, 278-279 respectively.

Although labor activists were able to force passage of a range of protective labor laws, ultimately the judiciary placed limits on male control of the workplace.[121] As the nineteenth century drew to a close, the Michigan legislature had created a structure that divided male and female workers as separate classes. The judiciary enhanced the gendered labor state by upholding protective labor legislation for men in dangerous employment only. By denying male workers legal protection, the state kept them in a dependent status. The decisions made in the 1890s ultimately affected women workers too. By using the type of employment as a basis for validation or invalidation of protective labor laws, the state judiciary set the stage for ruling differently for a class of women than they had done for a class of men in non-laborious labor.

Men however continued to fight for control over work relations. Largely defeated in their quest for a standardized workday, men found judicial support for safety legislation. Although factories were growing increasingly safer by the turn of the century, accidents still happened. Many unionists called for an end to common law doctrine that held employees negligent for workplace injuries. As part of a larger platform of protective labor legislation then, they sought laws to make employers liable.

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[121] In 1908, Michigan changed its constitution. Article five of section twenty-nine of the 1908 Michigan Constitution specifically gave the legislature the power to enact law relative to hours. "The legislature shall have power to enact law relative to hours and conditions under which men, women, and children may be employed."This article was embedded amongst a host of Progressive reforms, including the initiative and the referendum. The new constitution made protective labor legislation for men constitutionally permissible, but legislators applied the law to women and children more frequently than to male laborers. Michigan Constitution, 1908, art.29, sec. 5.

Chapter Three

'Industrial soldiers are entitled to adequate compensation for injury and death'[1]

Workers and Employer Liability

Helen Jendrus awaited the decision of the Michigan Supreme Court.[2] She had watched her husband vomit fecal matter, his lungs harden, and then saw him take his last breath. After witnessing her husband's painful death, Helen lodged a claim with Michigan's Industrial Accident Board for compensation for the accidental death of her husband. The Board had approved Helen's claim for workmen's compensation, but her husband's employer, Detroit Steel Products Company, disputed the request. Detroit Steel argued that Helen's husband, Joseph, had delayed medical treatment resulting in his death. The judiciary would decide if Joseph Jendrus

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[1] Chase Osborn, *The Iron Hunter* (New York: Macmillan Press, 1919), 142.

[2] The most comprehensive study of employer liability and workmen's compensation laws in America is John Fabian Witt, *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law* (Cambridge: Harvard University Press, 2004). Witt shows how these laws protected the family wage and were based on the male breadwinner. Although Witt does not set out to show the gendered politics within employer liability discussions, his assertions suggest that policymakers considered gender constructs when crafting laws. Witt also suggests that Americans started to see workmen's compensation as a right that was due them from the state. Michael Katz, *In the Shadow of the Poorhouse* (New York: Basic Books, 1986) shows the interconnectedness of welfare programs and workmen's compensation laws. Theda Skocpol, *Protecting Soldiers and Mothers: the Political Origins of Social Policy in the United States* (Cambridge: Harvard University Press, 1992) shows that unions were generally adverse to social insurance programs, but worker's compensation was the one exception.

Discussions of employer liability laws often grow out of the larger body of literature on master/servant doctrine. David Rosner and Gerald Markowitz, ed. *Dying for Work: Workers' Safety and Health in Twentieth-Century America* (Bloomington: Indiana University Press, 1987) address the legal status of injured workers. Donald Rogers, shows how factory laws replaced common law doctrines regarding employer liability. The dearth of factory laws led to comprehensive state laws about employer liability. Donald Rogers, "From Common Laws to Factory Laws: The Transformation of Workplace Safety Law in Wisconsin before Progressivism," *American Journal of Legal History* 39 (April 1995), 177-213.

had been guilty of intentional and willful neglect. His guilt would negate his widow's claim for compensation. His innocence would hold Detroit Steel liable for his death.[3]

On February 14, 1913, Joseph Jendrus was injured at work while polishing a spring coil. The spring caught in a machine belt, swung around, and struck him violently in the abdomen. An ambulance immediately took Joseph to Harper Hospital in Detroit. Jendrus' manager notified the insurance company and they dispatched their surgeon, Dr. W. H. Hutchings, who arrived at the hospital before the patient.[4] Upon his first examination, Hutchings did not find anything gravely amiss with Jendrus. Yet his health continued to fail. After a third examination, Dr. Hutchings discovered that Jendrus suffered from a ruptured intestine; he recommended immediate surgery. Jendrus hailed from Poland and did not speak English very well; the doctor did not speak Polish. It was necessary to find a translator. Dr. Hutchings found a Polish maid to translate and later testified that he told the translator, "If he is not operated on, he will surely die… . The longer you delay this, so much you take away from your chances of recovery."[5] Amidst confusion, pain, and fear, Joseph Jendrus refused surgery that night.

Joseph Jendrus' health continued to fail throughout the night. He vomited continuously, his abdomen grew tender and distended, and his pulse quickened. The next morning, Dr.

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[3] *Jendrus v. Detroit Steel Products Company*, 178 Mich. 265 (1913).

[4] Private health care was a luxury that few employees could afford. Generally, medical care was provided on a "pay as you go" standard. Some workingmen's associations provided group insurance for a small fee a month. Many employers kept a doctor on staff who was contracted to consult employees for no fee or a nominal one. Laborers feared that employer-provided medical professionals kept the best interest of the employer in mind when recommending procedures. Alan Derickson, "From Company Doctors to Union Hospitals: The First Democratic Health-Care Experiments of the United Mine Workers of America," *Labor History* 33 (Summer 1992), 325-342.

[5] *Jendrus v. Detroit Steel Products Company*, 178 Mich. 265 (1913).

Hutchings could not attend to Jendrus, but another physician consulted with him. Around 11:30 a.m. on February 15th, Jendrus agreed to the operation; the doctor operated two hours later. Preceding the surgery, Jendrus' vomiting worsened. During the surgery, Jendrus vomited fecal matter, which lodged in his lungs. As a result of the aspirated vomit, Joseph Jendrus developed pneumonia. He died on February 19, 1913. The grieving widow, Helen Jendrus, then claimed workmen's compensation. The Industrial Accident Board awarded her the sum of $10 per week for a period of 300 weeks from the date of the accident, February 14, 1913. Detroit Steel appealed this award, claiming that since Jendrus delayed consent to operate, he relinquished his dependent's right to make claim for compensation.[6]

The Michigan Supreme Court found that Jendrus had not been guilty of intentional and willful misconduct. They found no conclusive proof that if Joseph had consented to surgery on the day of the accident that he would have survived. In Justice John Stone's opinion, "It would be a harsh rule that bound an employee who had been injured to accept in all cases the dictum of a surgeon who advises an operation. Manifestly the employee cannot be called upon at all times and under all circumstances to place himself absolutely in the hands of the employer's surgeon."[7] The Court then affirmed the judgment of the Industrial Accident Board. Their decision showed a shift in judicial interpretations of the relation between master and servant; the servant was no longer completely responsible for himself and his fellow worker. Masters were held liable for harm. In the *Jendrus* case, judges controlled employment relations with decisions over what

[6] *Jendrus v. Detroit Steel Products Company*, 178 Mich. 265 (1913).

[7] Ibid.

constituted intentional and willful misconduct. But, in the end, laborers benefited in the struggle to restore and maintain self-government—an important characteristic of manhood.[8]

Courts played a strong role in determining the course of employment relations. The legal system subjugated workers.[9] In the nineteenth century, the Michigan judiciary strictly interpreted English common law master/servant doctrine in a manner that advantaged capital, while keeping control of employment relations. Labor activists, by contrast, attempted to craft employer liability laws to rebalance employment hierarchies. Many workers found that the strength of a union helped them to best pursue legislation. Unionists wanted to replace legal doctrines that automatically placed responsibility for workplace accidents on the employee with laws that made employers responsible. In the twentieth century, amidst worker agitation for employer liability laws, the judiciary less strictly applied master/servant doctrine to workplace accident cases. Considering that the United States Supreme Court had affirmed hours legislation

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[8] *Jendrus v. Detroit Steel Products Company*, 178 Mich. 265 (1913). For a discussion of how law gave form to white men as self-owning individuals, see Barbara Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865-1920* (New York: Cambridge University Press, 2001). Welke contends that a man's independence, which was the key qualification to citizenship, was secured through family headship and property ownership.

[9] Common law approach to workplace accidents, especially fellow servant, has been seen by scholars as judicially enacted assistance to emerging industries at the expense of workers. Morton Horwitz, *The Transformation of American Law* (New York: Oxford University Press, 1992) argues that the judiciary was instrumentalist in their actions and in the process promoted a legal redistribution of the wealth that disadvantaged workers. Christopher Tomlins argues that the fellow servant doctrine was integral to the construction of a hierarchical relationship between employer and employee. Robert Steinfeld contends that workers did not mind master/servant laws as long as employers kept up their end of the bargain, but when capital failed to provide work or sufficient wages labor opposed master/servant laws. Christopher Tomlins, *Labor Law in America* (Baltimore Johns Hopkins Press, 1992). Robert Steinfeld, *Coercion, Contract, and Free Labor in the 19th Century* (New York: Cambridge University Press, 2000). Other important works are Lawrence Friedman, *A History of American Law* (New York: Simon and Schuster, 1985), and Barbara Welke, "Unreasonable Women: Gender and the Law of Accidental Injury, 1870-1920" *Law and Social Inquiry* 19 (Spring 1994), 369-403 where she identifies the gendered elements in negligence cases.

for men in dangerous employment as a valid exercise of a state's police power, it was a natural course of action to deal with the rules surrounding accident liability.[10] The judiciary had determined that liberty to contract could be abridged when a worker's life was in jeopardy, but a male worker's contract right was not to be diminished for scant cause.[11] In decisions over maximum workday laws, the judiciary affirmed the orthodoxy of male agency.[12] Jurisprudence regarding workplace accident cases resembled gendered legal thought about hours legislation. While determining accident liability cases, Michigan judges reinforced a vision of manhood that fashioned men as responsible, moral, hard-working, independent, healthy breadwinners.

Decades before Michigan legislators enacted the 1912 employer liability and workmen's compensation law, labor activists sought a law that would shift responsibility for workplace

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[10] Scholars disagree about the extent that courts across the nation were becoming liberal in the late 19th century. Melvin Urofsky states that "with only a few exceptions [maximum hours and minimum wages for men], state courts moved consistently toward approval of a wide range of reform legislation." Urofsky insists that, although the highest court in the land adhered to laissez-faire ideology, state courts applauded reform. To the contrary, Paul Kens argues that the court had not become liberal and that judges interpreted laws within a narrow definition of police power that reflected the laissez-faire court. Scholarly agreement can be found when looking at judicial interpretation of employer liability and workmen's compensation laws. Although Urofsky and Kens differ on their beliefs as to why the courts upheld these type of laws, both agree that the courts largely did validate reform laws. The Supreme Court of Michigan proves valid points made by both Kens and Urofsky. Michigan judges reflected reformist views when deciding the constitutionality of laws that regulated women and children, but did so within the narrow definition of police power that they had created. Melvin Urofsky, "State Courts and Protective Legislation during the Progressive Era: A Revolution," *Journal of American History* 72 (1985), 64, 64-91. Paul Kens, "The Source of a Myth: Police Powers of the State and Laissez-Faire Constitutionalism, 1900-1937," *The American Journal of Legal History* 35 (January 1991), 70-98.

[11] *Holden v. Hardy*, 169 U.S. 366 (1898) and *Lochner v. New York*, 198 U.S. 45 (1905).

[12] For the decisions of *Holden v. Hardy*, *Lochner v. New York*, and *Muller v. Oregon*, see chapter two.

accidents from the employee to the employer.[13] An employer liability law would flatten the employment hierarchy; laborers would be in a stronger position to hold their employers liable for accidents. Influenced by progressive reformers, with little input from labor organizations, the 1912 law disappointed labor activists who had fought for employer liability. The law included a no-fault clause that fell drastically short of union goals to reposition the work relation hierarchy. The law did not place responsibility for workplace accidents on capital; instead, it removed blame from employers and laborers and placed the state in control of workplace accidents. Labor activists, especially the Knights of Labor and American Federation of Labor, had tried to construct a protective structure where the state was largely absent from employment relations, except to implement and enforce union-crafted legislation.[14] Instead, the employer liability and workmen's compensation law enhanced state oversight of labor by making the Industrial Accident Board a party to all accident claims.[15]

English common law doctrine regarding accident liability, assumption of risk, fellow servant, and employee negligence, were default not immutable rules, yet they governed master and servant cases for the nineteenth century.[16] Employers used contributory negligence doctrine

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[13] *Public Acts of Michigan*, 1912, Special Session, no. 10, 21-40.

[14] For the Knights of Labor' legislative platform, see Richard Oestreicher, "The Knights of Labor in Michigan: Sources of Growth and Decline" (M.A. thesis, Michigan State University, 1973). For the American Federation of Labor, see Julie Greene, *Pure and Simple Politics: the American Federation of Labor and Political Activism, 1881-1917* (New York: Cambridge University Press, 1998).

[15] *Public Acts of Michigan*, 1912, Special Session, no. 10, 21-40.

[16] John Fabian Witt argues that default rules of contract interpretation did not directly affect employer/employee contract negotiations. This is not to say that these rules were not important. Witt concludes that labor and legal scholars ignore the impermanence of these rules to their own peril though. He also calls for further analysis of employee contracts in light of the rules of

to deny liability whenever an employee's actions may have contributed to an accident or death.[17] Employees had to take "due care" in the course of employment not to injure themselves; if the court found that they had not, then the employer was not held liable for injury. Similarly, the doctrine of assumption of risk mandated that employees, if injured, were liable for their injuries because they had assumed the risk when they contracted to work.[18] Finally, fellow-servant doctrine made workers responsible for the safety and welfare of fellow employees.[19] If an accident occurred, the fellow employee, not the employer, was liable for any resultant injury or death. These three doctrines placed liability for accidents on laborers. As long as blame for accidents was placed on workers, employers were less likely to provide safe working conditions and workers were limited in their self-defense.

Working men were supposed to care for themselves and accept blame for accidents. Michigan's labor scene was no exception. News reporters reinforced worker accountability for accidents. Stories describing workplace accidents, although sympathetic to the worker's injury,

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contract making. He questions whether employees were savvy enough to make contracts that skirted labor unfriendly default rules. John Fabian Witt, "Rethinking the Nineteenth-Century Employment Contract, Again," *Law and History Review* 18 (Autumn 2000), 627-657.

[17] For an example of an employee negligence case, see *Sjogren v. Hall*, 53 Mich. 274 (1894). Sawmill owners appealed a judgment from a Muskegon circuit court that awarded an employee damages for his injuries. The Michigan Supreme Court granted a new trial on the ground that the evidence showed no more negligence on one side than the other. Many Michigan appellate decisions regarding workplace accidents held the employee negligent unless there was a fellow worker to hold liable.

[18] For an early example of assumption of risk, see *Piquegno v. Chicago and Grand Truck Railway*, 52 Mich. 40 (1883). The Michigan Supreme Court set the precedent that whoever hires out for any service assumes the risks associated with it.

[19] For an example of the fellow servant rule, see *Henry v. Lake Shore & Michigan Southern Railway Co*., 49 Mich. 495 (1882). The court found that if an injury to an employee was caused by the negligence of a fellow workman, the employer was not liable.

directly placed cause on the worker. A *Saginaw Weekly* reporter noted, "A sad accident occurred, resulting in the death yesterday of James Montgomery, employed as a chopper. The unfortunate man was engaged in felling a tree, and not running away from it soon enough, a limb in its descent struck him on the head, inflicting fearful injuries."[20] Unsafe working conditions did not cause James Montgomery's accident; it was his fault for not getting out of the way quickly enough from a falling tree. The reporter made no mention of Montgomery bringing suit for damages.[21]

From 1883 through 1912, the Michigan Supreme Court heard numerous disputes on appeal involving injured workers seeking compensation. In the majority of late nineteenth century cases, justices held the employee liable for the injury.[22] The court strictly adhered to old doctrines when the risk was a known part of the job.[23] Throughout the early twentieth century, the judiciary maintained that employees assumed certain risks, but were more likely to find the

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[20] "Camp Casualties," *Saginaw Weekly*, December 20, 1883.

[21] Other reports also indicated employee negligence. This statement derives from a careful reading of the *Detroit Free Press* and the *Saginaw Daily Courier* from 1883-1890. See, e.g., "A railroad collision caused by an engineer's carelessness" *Detroit Free Press*, January 7, 1883 or "A boy thrown out of a wagon and died five hours late from his injuries" *Detroit Free Press*, January 25, 1883.

[22] The following cases are a sampling of disputes brought before the court where justices ruled that the employee was to blame for the accident and was, therefore, ineligible for damages. *McGinnis v. Canada South Bridge*, 49 Mich. 466 (1882); *Richards v. Rough*, 53 Mich. 212 (1884); *Balle v. Detroit Leather*, 73 Mich. 158 (1889); *Journeaux v. E.H. Stafford*, 122 Mich. 396 (1899); *Shippey v. Grand Rapids*, 124 Mich. 533 (1900); *Kellogg v. Stephens Lumber*, 125 Mich. 222 (1900); *Nowakowski v. Detroit Stove Works*, 130 Mich. 308 (1902); *Bauer v. American Car and Foundry*, 132 Mich. 537 (1903).

[23] Close reading of cases involving master/servant issues from 1882 through 1899. *Michigan Reports*, multiple volumes.

employer liable when he failed to follow the orders of the factory inspector.[24] By 1904, the Michigan Supreme Court also reconsidered fellow servant doctrine.[25] By holding employers liable in more instances, the court aided workers seeking compensation. After the 1912 employer liability act, the burden of proof for negligence was placed on the employer. Employers had to prove that an employee's "intentional and willful" negligence had singularly caused the accident.[26]

The old servile character of workers contradicted social beliefs about strong, independent working men. Labor unionists wanted to empower the working class; one way to do this was to enact legislation holding employers liable for workplace accidents. The preamble to the Council of Trades and Labor Unions acknowledged that "labor has no protection—the weak are devoured by the strong. All wealth and power center in the hands of the few, and the many are their victims and bondsmen."[27] Independence may have been a key aspect of manhood, but workers were little better than slaves.

Labor unions were not the only group interested in changing master/servant doctrine. Social reformers also took a keen interest in workmen's compensation and employer liability

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[24] The following actions show the Court moving away from a strict interpretation of "assumption of risk" and holding the employer responsible for warning employees of risks, providing a "reasonable safe place to work," and following the orders of the factory inspector. *Pahlan v. Detroit*, 122 Mich. 232 (1900); *Doyle v. Toledo*, 127 Mich. 94 (1901); *McDonald v. Champion Iron and Steel*, 140 Mich. 401 (1905); *Brockmiller v. Industrial Works*, 148 Mich. 642 (1907).

[25] *Lockwood v. Tennant*, 137 Mich. 305 (1904).

[26] The following cases are examples of tort suits where the court held employees guilty of negligence and waived employer liability. *Brown v. Congress*, 49 Mich. 153 (1882); *Sjogren v. Hall*, 53 Mich. 274 (1884); *Chilson v. Lansing*, 128 Mich. 43 (1901); *Cron v. Toledo and Monroe Railway*, 132 Mich. 497 (1903); *Drake v. Industrial Works*, 174 Mich. 622 (1913); *Fernette v. Pere Marquette*, 175 Mich. 653 (1914).

[27] *Preamble, Constitution, and By-Laws*, Detroit Council of Trades and Labor Unions, Pamphlets and documents, 1889, Labadie Collection, University of Michigan.

laws.[28] Anxious about industrial society and attendant evils, reformers attempted to hold industrialists accountable. Previous common law doctrines regarding work accidents, which perhaps had been adequate for simpler market systems, did not comport with the complexities of industrial work. An increased accident toll increased a sense of urgency. Reformers argued for legislation that removed common law defenses of employers. Reformers also sought laws that would standardize compensation for workplace accidents. John Witt contends that a critical factor in the development of workmen compensation laws was the push for "managerial control in the workplace to generate social efficiencies."[29]

Michiganians also sought employer accountability through laws that reflected a modern way of thinking about employer liability. In the words of Michigan attorney and reformer Hal Smith: "When an eighteenth century constitution forms the charter of liberty of a twentieth

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[28] John Fabian Witt contends that the transformation of employer liability and workmen's compensation law changed the way that Americans thought about and organized work. He points that workmen's compensation led to enhanced managerial control over industrial workers. John Fabian Witt, "The Transformation of Work and the Law of Workplace Accidents, 1842-1910," *The Yale Law Journal* 107 (March 1998), 1467-1502. Scholars debate which group was most influential in fomenting workmen's compensation laws: capitalists, reformers, or laborers. Arthur McEvoy argues that industrial accidents such as the Triangle Shirtwaist Fire removed ideological barriers to industrial accident legislation. Arthur McEvoy, "The Triangle Shirtwaist Factory Fire of 1911: Social Change, Industrial Accidents, and the Evolution of Common-Sense Causality," *Law and Social Inquiry*, 20 (Spring 1995), 621-651. Paul Bellamy asserts that corporations led the movement for accident law reform, because they wanted to avoid sympathetic juries comprised of workers. Although both social reformers and capitalist were influential in fomenting liability and compensation laws, workers too participated in the movement. Paul Bellamy, *A History of Workmen's Compensation, 1898-1915* (New York: Garland Publishing, 1997). Theda Skocpol notes that although labor unions did not generally back social insurance programs, workmen's compensation was one area where labor unions rallied around the cause. Unlike other types of insurance programs, higher wages, which labor unions typically sought, would not assist injured or deceased workers. Theda Skocpol, *Protecting Soldiers and Mothers: the Political Origins of Social Policy in the United States* (Cambridge: Harvard University Press, 1992).

[29] John Fabian Witt, "The Transformation of Work and the Law of Workplace Accidents, 1842-1910," *The Yale Law Journal* 107 (March 1998), 1487.

century government, must its general provisions be construed and interpreted by an eighteenth century mind in the light of eighteenth century conditions and ideals? Clearly not. This were [*sic*] to command the race to halt in its progress."[30] The democratic system could be halted by applying outdated common law doctrine to modern issues.[31]

Michigan's Progressive-era governor, Chase Osborn, similarly encouraged labor reform.[32] He favored political reform such as the initiative, referendum, and recall, primary election reform, and the extension of state regulatory control over business. In his 1919 autobiography, *The Iron Hunter,* Osborn reflected on the workers in Michigan whom he termed "industrial soldiers." He argued that "industrial soldiers" were entitled to "continuous employment…to a minimum wage, to old age insurance and pensions, to adequate compensation for injury and death, to sanitary housing, and moral environments."[33] Osborn's religious faith guided his beliefs about the need for better workplace laws. In his words, "I am my brothers' keeper and this must

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[30] Hal H. Smith, "Workmen's Compensation in Michigan," *Michigan Law Review* 10 (February 1912), 288.

[31] Reformers were also concerned that an increased unskilled labor force could lead to the denigration of self-government. Skilled workers and reformers argued that through work process oversight that skilled workers had trained to self-govern. Unskilled workers who had not learned how to exercise judgment over the work process could weaken America's democratic system. John Fabian Witt, "The Transformation of Work and the Law of Workplace Accidents, 1842-1910" *The Yale Law Journal* 107 (March 1998), 1467-1502.

[32] Chase Salmon Osborn lived from 1860-1949. As a reporter and manager of several newspapers, Osborn became increasingly interested in politics. In 1889, he was appointed postmaster of Sault Ste. Marie and six years later became Michigan's fish and game warden. In 1898, Hazen Pingree appointed Osborn Commissioner of Railroads. Osborn moved to the lower peninsula and ran an unsuccessful campaign for governor in 1900. He served on University of Michigan's Board of Regents and was elected governor in 1910. He served a two-year term as governor. After several unsuccessful attempts at regaining political office, Osborn went back to the newspaper business. The best biography of Chase Osborn's life is Robert Warner, *Chase Salmon Osborn* (Ann Arbor: University of Michigan Press, 1960).

[33] Chase Osborn, *The Iron Hunter* (New York: Macmillan Press, 1919), 142.

comprehend social kindnesses as well as economic guardianship."[34] For Osborn, industrialists should create better working conditions, not only because it would improve their businesses, but because it would better their souls.

In the twentieth century, reformers tied discussions of employer liability to those of workmen's compensation programs, which benefited capital and, in some ways, labor. Beginning in the early twentieth century, legislators across the nation began to craft employer liability and workmen compensation laws. After petitions from labor unions and promotion from Chase Osborn, Michigan joined the ranks of those states investigating the feasibility of these laws.[35] Michigan's employer liability and workmen's compensation act was the result of several forces, not least of which was a changing judicial and legislative climate towards employee liability.

In 1909, Michigan legislators made railroad companies liable to their employees.[36] This law acknowledged the dangerous nature of railroad work, a fact addressed by previous safety laws in the late nineteenth century.[37] The act barred railroad employers from accusing their employees of contributory negligence and stated that "the negligence of such employe [*sic*] was of a lesser degree than the negligence of such company, its officers, agents, or employes [*sic*]."[38]

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[34] Chase Osborn, *The Iron Hunter* (New York: Macmillan Press, 1919), 142.

[35] *Michigan House Journal*, 1st extra sess., February 26-March 20, 1912.

[36] *Public Acts of Michigan*, 1909, no. 104, 210-211.

[37] *Public Acts of Michigan*, 1885, no. 147, 165-166 required couplers on railroad cars so that brakemen would not get caught between rail cars. In 1887, Michigan legislators protected workers on trains. *Public Acts of Michigan*, 1887, no. 118, 134. An 1893 law regulated workdays of certain railroad employees. *Public Acts of Michigan*, 1893, no. 177, 276.

[38] *Public Acts of Michigan*, 1909, no. 104, 210-211. In *Quick v. Detroit and Mackinac Railway Co*., 175 Mich. 676 (1913), the Michigan Supreme Court upheld the law as constitutional.

Although the act only applied to railroad carriers, it encouraged reformers to contemplate employer liability and compensation for workplace accidents for all industrial employees.

With the burden of liability shifting away from workers, employers faced personal injury lawsuits for workplace accidents. Tort suits could be costly to an employer. Left up to a jury composed of many working-class jurors, financial awards could bankrupt small companies. Capitalists therefore supported workmen's compensation laws to reduce the costs of doing business.[39] Worker compensation laws offered employers standardized damages that allowed companies to better plan their business expenses; no longer did they have to fear a sympathetic jury awarding massive damages to an injured worker or his widow. Although workers found the "no-fault" aspect of worker compensation insurance disadvantageous to the cause of labor, employees could look to such measures as a fair way to handle injury disputes without costly attorney fees. The new method of arbitration was also predictable. The law applied equally to all industrial workers; an arm of a Polish man would be worth the same as the arm of an English man.[40]

Proponents of employer liability and workmen's compensation boasted not only that business costs would be alleviated, but also that social costs would diminish.[41] Many Americans feared that the new industrial complex was too impersonal, that the master no longer cared for

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[39] Hal H. Smith, "Workmen's Compensation in Michigan," *Michigan Law Review* 10 (February 1912), 278-290.

[40] *Public Acts of Michigan*, 1912, Special Session, no. 10, 21-40.

[41] At the time that many states were adopting workmen's compensation laws, reformers advocated for broader social welfare programs. Social welfare was deemed acceptable for widowed mothers, but not for able-bodied men. Of great concern was woman's economic vulnerability. Theda Skocpol shows that largely paternalist social legislation was struck down, but that maternalist legislation was upheld. Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge: Belknap Press of Harvard University Press, 1992).

the servant. With the development of companies that employed thousands of workers, owners could not oversee all of their operations or see to the needs of their workers. How could workers be responsible for their numerous fellow servants? In an article for the *Maine Law Review*, J.E. Rhodes II argued that former master/servant doctrines were not sufficient to order modern employer/employee relations, because the relationship had changed from a few servants to thousands of servants working for one master. Rhodes observed that "the large industrial corporation, with few interests in common and the element of personality in employment [is] practically gone."[42] Rhodes praised state legislators who enacted employer liability laws; employers could not possibly look out for the good of each and every employee.

Reformers contended that employer liability and workmen compensation laws would protect workers while decreasing the need for social welfare. With responsibility for employee injuries on the shoulders of owners, they might better safeguard their factories and train their workers to operate machinery safely. Employer liability laws, coupled with workmen's compensation laws, could lower the public cost of welfare. At the time, many state legislatures, Michigan included, considered mother's pensions.[43] A mother's pension paid poor mothers who were unmarried, divorced, widowed, or deserted and unable to provide economic support for

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[42] J.E. Rhodes II, "Employers' Liability or Workmen's Compensation?" *Maine Law Review* 5 (1911-1912), 170.

[43] Theda Skocpol, *Protecting Soldiers and Mothers* (1992) provides a comprehensive discussion of the difference of American social policy, its origins, and its results. Maternalist legislation was deemed socially necessary because of women's political disenfranchisement and low wages. Motherhood became a state issue during the Progressive era. Although mother's pensions were too low to afford mothers to leave wage work, they formed an important part of women's rights campaigns. Joanne Goodwin, *Gender and the Politics of Welfare Reform: Mothers' Pensions in Chicago, 1911-1929* (Chicago: University of Chicago Press, 1997). Goodwin argues against Skocpol, that local activists were more important in the fight for maternal legislation than national reformers were.

their children, but were otherwise good guardians.[44] Widows and dependent children burdened society; workmen's compensation laws would decrease the number of women making application for public welfare funds. Employer-funded medical care for work-related injuries could also lessen the need for assistance. With company-subsidized medical care, workers who may have been permanently disabled could be rehabilitated and enabled to rejoin the workforce.

Progressive reformers and labor organizations both sought employer liability laws, but approached the problem differently. As Ruth O'Brien contends, progressive reformers sought employer liability laws to make both employers and unions accountable.[45] Labor organizations sought laws to consolidate worker power, not to be controlled. The Knights of Labor and American Federation of Labor campaigned for laws regarding workplace accidents that would prohibit employers from claiming fellow servant or assumption of risk rules as a defense.[46] Unionists supported employer liability laws because they hoped that these laws would shift the balance of power between worker and employer. An employer liability law would place blame on the employer instead of the worker. Numerous unions, including the Bartenders Union of

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[44] In 1913, the Michigan legislature enacted Public Act 228, which provided a pension for poor mothers of children who were unable to provide for their children, but were otherwise proper guardians. The Michigan State Federation of Women's Clubs also lobbied for Michigan's employer liability and workmen's compensation law. *Public Acts of Michigan*, 1913, no. 228, 444-445.

[45] Ruth O'Brien argues that progressives wanted to hold union members accountable for their actions. To do so, reformers supported labor reform through "responsible unionism." Ruth O'Brien, "Business Unionism versus Responsible Unionism: Common Law Confusion, the American State, and the Formation of Pre-New Deal Labor Policy," *Law and Social Inquiry*, 18 (Spring 1993), 255.

[46] Numerous editions of the *Labor Leaf* and *American Federationist* discuss need for employer liability laws. The 1884 legislative program for the Knights of Labor cites sixteen areas needing legislative correction or implementation, one of which was "employer liability for unsafe machinery and working conditions." Maurice Ramsey, "The Knights of Labor in Michigan, 1878-1888" (M.A. thesis, Colleges of the City of Detroit, 1932), 31-32.

Grand Rapids and the Carpenters' Union of Alpena, petitioned the Michigan legislature to enact this type of protective legislation.[47] The Michigan Bureau of Labor surveyed a group of unions and asked what suggestions they would make for legislation. They desired: shorter work days, compulsory arbitration, weekly pay, abolishment of prison labor, adoption of initiative and referendum, strict boiler inspection laws, strict anti-trust laws, Chinese exclusion act, making employers liable for injuries to employees, laws defining the uses of the injunction, licensing engineers, strict enforcement of child labor laws, Sunday closing law, doing away with piece work, and labor to have representation in the President's cabinet.[48]

As employer liability laws became tied to no-fault workmen's compensation laws, workers lost the opportunity to hold their employers accountable for unsafe machinery and working conditions. Some workers feared that a workmen's compensation law would deprive them of their liberty by preventing them from bringing personal injury suits against their employers.[49] Inability to bring suit against their employers deprived men of control over their actions. The cost for an employer liability law came to workers at the price of no-fault workmen's compensation that placed laborers under the state's control.[50] In essence, workers traded one master for another.

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[47] *Michigan House Journal*, 1st extra sess., February 26 to March 20, 1912, 107.

[48] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1902, 54-55.

[49] In the *Mackin* case, an employee raised questions about the constitutionality of the workmen's compensation portion of the 1912 act claiming that it deprived a parent of the right of action for injury to his child; discriminated against domestic, farm, and casual employees; was class legislation; deprived workers of the right to be represented by an attorney; and gave the Industrial Accident Board judicial powers. Ultimately, the Michigan Supreme Court validated the employer liability and workmen's compensation law. *Mackin v. Detroit-Timkin Axle Co.*, 187 Mich. 8 (1915).

[50] Robert Asher, "Business and Workers' Welfare in the Progressive Era: Workmen's Compensation Reform in Massachusetts, 1880-1911," *The Business History Review* 43 (Winter

By the 1910s, Michigan reformers and unionists were sharply divided over the best way to hold employers liable. Reformers favored a workmen's compensation law; they gained political support in their quest from gubernatorial candidate Chase Osborn. In numerous campaign speeches, Osborn encouraged state-led worker protection.[51] Osborn's influence should not be underestimated; he was an ardent voice for labor reform. In his inaugural address, he promoted legislative repeal of fellow servant laws.[52] As soon as Osborn occupied the governor's office, he appointed a commission to investigate and report on employer liability laws and to present a law to the Michigan legislature to embody its conclusions.[53] Osborn encouraged an end to previous common-law defenses for workplace accidents lawsuits. The governor also strongly suggested an investigation into workmen's compensation insurance.[54]

Chase Osborn gathered members for the "Workmen's Compensation" commission from the business and legislative community. The members included Hal H. Smith, Charles Sligh, Michael McCuen, William Belden, Ora Reaves, and Richard Drake.[55] After intensive study of workmen compensation laws in other states, the commission presented their findings to

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1969), 452-475. Asher shows that unions found their proposals for employer liability law either tabled or caught up in committees that never produced legislation. In Michigan, workers had to settle for an employer liability law tied to a workmen's compensation act.

[51] Robert M. Warner, "Chase S. Osborn's 1910 Primary Election Campaign," *Michigan History* 43 (September 1959), 349-384.

[52] Chase Osborn, inaugural address to legislature, January 5, 1911, *Michigan House Journal*, 68-86.

[53] Commission appointed June 1911.

[54] Chase Osborn, inaugural address to legislature, January 5, 1911, *Michigan House Journal*, 68-86.

[55] Hal H. Smith, "Workmen's Compensation in Michigan," *Michigan Law Review* 10 (February 1912), 278-290.

Michigan's House of Representatives on February 26, 1912.[56] Although the Michigan legislature was assembled mainly to discuss the adoption of a primary law, the workmen's compensation bill garnered a good deal of attention over the subsequent days of the special session. When Osborn introduced the commission's work to the House, he referred to it as "painstaking and patriotic work."[57] He asked the legislators to recall his inaugural address and told them that "their early action will hasten the day when shall start a more just and wise and happy distribution of the hazard of industrial employment."[58]

In an article published in the *Michigan Law Review*, Hal Smith, the commission chairman, underscored the care with which the Michigan commission had investigated the constitutionality of other states' workmen's compensation laws.[59] Smith wanted Michigan's law to be compulsory to the state, elective to private industry, and exempt for farm workers and domestic servants; provide reasonable compensation at a minimum cost for all accidents except those that resulted from willful misdeed; that it specify fixed compensation; that it guarantee payment of compensation; that it could be enforced with a minimum of litigation; and that it would help prevent accidents.[60] Although it is difficult to say if the law encouraged an atmosphere that prevented accidents, Smith's bill accomplished many of his goals. After studying judicial reactions to employer liability and workmen's compensation laws, Smith hoped

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[56] *Michigan House Journal*, 1st extra sess., February 26-March 20, 1912, 10-15.

[57] Ibid.

[58] Ibid.

[59] Smith had a history of representing labor interests; two years earlier, he had represented plaintiffs in a suit to have Michigan's nine-hour law for women declared unconstitutional. *Withey v. Bloem*, 163 Mich. 419 (1910)

[60] Hal H. Smith, "Workmen's Compensation in Michigan," *Michigan Law Review* 10 (February 1912), 278-290.

to avoid the troubles that had plagued other state legislatures.[61] Said Smith, "It is devoutly to be hoped that the courts will be able to permit the experiment, not by yielding constitutional principles to a needed reform, but by developing that reform within constitutional limits."[62] The Michigan Supreme Court affirmed the constitutionality of Michigan's 1912 employer liability and workmen's compensation law in 1915.[63]

Had the legislature enacted the law a few months earlier, the case of Kazmir Fryezynski might have been decided differently.[64] In *Fryezynski v. Rice* (1912), the Michigan Supreme Court ruled that Fryezynski, who lost his forearm and hand, had assumed the risks of the job and was not due any award for his injury. Initially, the Emmet County Circuit Court had awarded Fryezynski compensation for his injury; his employer, W.W. Rice Leather Company appealed the award. Fryezynski had been injured while changing a burlap sack on a roller at the W.W. Rice Leather Company. As part of his duties, Fryezynski covered large rollers with burlap; he would then slide soaked hides through the rollers; the burlap absorbed excess water. While he was putting fresh burlap on a roller, the material caught his finger and drew his hand into the rollers, which in turn crushed his fingers. Fryezynski sought compensation because the injury happened at the workplace and the activity that caused the accident was a normal part of his job. Although co-workers testified that the job was inherently unsafe for one man, the court ruled that

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[61] Smith was especially concerned with the ruling of the New York Court of Appeals that had determined that New York's employer liability law was unconstitutional. *Ives v. South Buffalo Railway Co*., 201 N.Y. 271 (1911).

[62] Hal H. Smith, "Workmen's Compensation in Michigan," *Michigan Law Review* 10 (February 1912), 290.

[63] *Mackin v. Detroit-Timkin Axle Co.*, 187 Mich. 8 (1915).

[64] *Fryezynski v. Rice*, 171 Mich. 113 (1912).

Fryezynski assumed the risks of the job and was not due compensation for any resultant injuries.[65]

In the *Fryezynski* case, Judge Joseph Steere had much to say about manhood. The court was reversing the lower court's judgment for Mr. Fryezynski because the claimant had unmanned himself: "This is not a case of youth, inexperience, want of capacity, or ignorance. He was a grown man, was familiar with the machine on which he worked, and the material he used." Real men knew how to work and possessed common sense. The judge placed the blame for the injury on Fryezynski; he was not acting like a grown man with work experience. Judge Steere cited two cases involving young women as a reason why Fryezynski should be held responsible for his accident. If women could be responsible for their workplace injuries, surely a man could.[66]

Michigan's legislature enacted the employer liability and workmen's compensation act in March, 1912.[67] Aside from discussions about proper word choice, legislators easily passed the bill through the legislature process.[68] By framing the law as a promotion of public welfare, legislators placed the act within the police powers of the state. The law applied primarily to male workers, as is evidenced by the use of male pronouns, the word "workmen" in its title, and the

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[65] *Fryezynski v. Rice*, 171 Mich. 113 (1912).

[66] *Kupkofski v. John Spiegel*, 135 Mich. 7 (1903) involved a 17 year old girl who was injured when her hand was caught by a roller. *Connolly v. Eldredge*, 160 Mass. 566 (1894) involved a twenty-year-old woman who was engaged in work quite similar to Fryezynski's.

[67] *Public Acts of Michigan*, 1912, Special Session, no. 10, 21-40. The act was titled, "An Act to Promote the Welfare of the People of this State, relating to the liability of employers for injuries or death sustained by their employes, providing compensation for the accidental injury or death of employes and methods for the payment of the same, establishing an industrial accident board, defining its powers, providing for a review of its awards, making an appropriation to carry out the provisions of this act, and restricting the right to compensation or damages in such cases to such as are provided by this act."

[68] *Michigan House Journal*, 1st extra sess., February 26-March 20, 1912, 10-15, 30-31, 98-158.

masculine spelling of employee, but allowed for husbands to make claims on behalf of their working wives. Unless the Industrial Accident Board found workers willfully derelict, employers could not claim employee negligence as a defense in injury cases. Also, the law nullified the old rules of law of fellow servant, assumption of risk, and employee negligence.[69]

The law created an Industrial Accident Board and set its structure as to who could make claims, the compensable rate for specific injuries, and duration of compensation. For example, a worker who lost an eye would be paid 50% of his average weekly earnings for 100 weeks.[70] Workers had to be incapacitated for more than two weeks in order to make a claim to the Board. Employers paid for medical care necessary to treat injuries resulting from work-related accidents. In the case of death, dependents could lodge a claim. It was presumed that if a husband or wife lived together at the time of death, the living spouse was wholly dependent, as were children under 16 years of age. The act did not apply to casual workers, farm laborers or domestic servants.[71]

State courts immediately endorsed Michigan's employer liability and workmen's compensation law. The employer liability and workmen's compensation law stated that employers could not use fellow servant, employee negligence (unless willful), or assumption of risk doctrines as a defense in actions to recover damages for personal injuries or death. Once the employer liability law was enacted, the burden of proof for employee negligence attached to the employer. Employees were no longer to blame, but the no-fault aspect of the law meant that neither were employers. In this respect, the law fell short of worker goals. The law nonetheless

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[69] *Public Acts of Michigan*, 1912, Special Session, no. 10, 21-40.

[70] Ibid.

[71] Ibid.

affirmed the value of workers by freeing them from restrictive common law doctrines and assigning a tangible value to their person. In order to avoid accelerated insurance costs, the law encouraged employers to create safer work environments.[72]

In 1915, a woman was injured in almost exactly the same way as Kazmir Fryezynski had been; the court affirmed her damages; the company had not proved her negligence.[73] Indeed, from 1912-1915, the Michigan Supreme Court affirmed most of the decisions of the Industrial Accident Board regarding workmen's compensation claims. Out of the 78 Michigan Supreme Court cases examined, the Industrial Accident Board awarded 92% of claims made by dependents and 76% of claims brought by injured workers.[74] For cases appealed to the high court, Michigan justices affirmed or remanded 82% of claims made by dependents and 72% of those made by workers.[75] Likely, the Industrial Accident Board and Michigan Supreme Court treated favorably those claims made by dependents because death was the worst outcome of an industrial accident and widows could strain social resources.[76]

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[72] *Public Acts of Michigan*, 1912, Special Session, no. 10, 21-40.

[73] *Schuetz v. Van Orman*, 184 Mich. 478 (1915).

[74] Michigan's Industrial Accident Board, *Workmen's Compensation Cases, 1912-1915* (Lansing, MI: State Printers, 1916). Out of 78 workmen compensation cases appealed to the Supreme Court, 36 were brought forth by dependents and 42 by workers. Of the 36, the Industrial Accident Board awarded 92% of them. Of the 42 claims made by workers, the IAB awarded 76% of them.

[75] Ibid.

[76] Important cases where the Michigan Supreme Court affirmed decisions of the Industrial Accident Board include*: Jendrus v. Detroit Steel Products Co*., 178 Mich. 265 (1913); *Reck v. Whittlesberger,* 181 Mich. 463 (1914); *Rayner v. Sligh Furniture,* 180 Mich. 168 (1914); *Evans v. Detroit, Grand Haven and Milwaukee Railway Co.,* 181 Mich. 413 (1914). In *Clem v. Chalmers Motor Co*., 178 Mich. 340 (1914) the Court affirmed the decision of the Industrial Accident Board even though the employee seemed blatantly at fault. In *Blick v. Olds Motor Works,* 175 Mich. 640 (1913), the Court ruled that an employer is required to provide a reasonably safe place for workers to labor. In *Eberts v. Mt. Clemens Sugar Co.,* 182 Mich. 449

Since protecting women fell distinctly within the Progressive reform agenda, the judiciary basically affirmed the state's role as a substitute husband, repeatedly sustaining claims made by widows unless the claim did not fit under the scope of the law. For instance, the judiciary reversed Accident Board awards for an occupational disease (not covered under the law), an injury that was an act of God (lightning), and injuries that happened away from of the worksite, were outside the course of employment, or were inherent to the job (a police officer died).[77] In actions where the court ruled on the application of the law and not its constitutionality, the judges followed national trends to protect women, as with the determination in *Clem v. Chalmers Motor Company* (1914).[78]

In January of 1914, the Michigan Supreme Court affirmed an award by the Industrial Accident Board to a worker's widow, Jessie Clem. Her husband, Charles Clem, died while working at Chalmers Motor Company. Clem was a carpenter who was placing roof boards on a building when the sub-foreman instructed the men to come down from the roof for a coffee lunch. Clem and two other men used a rope to climb down off the building instead of using the ladder provided. Clem went down the rope first and fell, sustaining injuries that resulted in his death. Jessie entered a claim to the Industrial Accident Board and was awarded compensation.

(1914) the Court affirmed the claim and stated that employers could not escape liability through the fellow-servant rule. In *Limron v. Blair,* 181 Mich. 76 (1914) the Court vacated the order of the Industrial Accident Board in order to uphold the claim of a worker.

[77] *McCoy v. Michigan Screw*, 180 Mich. 454 (1914). An exception occurred in this case when the Supreme Court reversed a decision to award a man blinded by metal shavings, because the man suffered from gonorrhea. This case, however, was the exception, rarely, did the Michigan Supreme Court reverse awards made by the Board.

[78] *Clem v. Chalmers Motor Co*., 178 Mich. 340 (1914).

Chalmers Motor Company appealed the award, claiming that Charles Clem had been willfully negligent.[79]

The Michigan Supreme Court affirmed the award to Clem's widow, maintaining that the luncheon was part of Charles' work duties.[80] Clem was ordered by his supervisor to attend the gathering; he was injured in transit to the event. Since attending the coffee lunch was part of his job, damages attached to any injury sustained by Clem while completing his duties. The attorneys for Chalmers Motor Company claimed that Clem acted negligently by not using the provided ladder. The justices surmised that since the roof was not too high and that Clem was accustomed to physical toil, he did not expect to be hurt; it was not intentional and willful misconduct. Judge Joseph Moore stated that while Clem may have taken a risk, it was one that any normal man would take. In the process, he basically affirmed Clem's competence as a man capable of sound judgment. Moore asserted, "There is scarcely a healthy, wide-awake ten-year-old boy who does not frequently take a greater chance and without harm."[81]

Six months after the *Clem* case, the same court reversed an award granted by the Industrial Accident Board.[82] In *McCoy v. Michigan Screw*, the justices heard a case involving a claim made by William McCoy regarding the loss of his eye. McCoy had been operating a lathe machine when several small pieces of steel flew off the machine and lodged in his eye. The metal irritated his eye, so he rubbed it. When the injury occurred, McCoy was being treated for gonorrhea. Justice Franz Kuhn maintained that his gonorrheal infection could have caused the

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[79] *Clem v. Chalmers Motor Co*., 178 Mich. 340 (1914).

[80] Ibid.

[81] Ibid.

[82] *McCoy v. Michigan Screw Co*., 180 Mich. 454 (1914).

loss of the eye; therefore, McCoy was not eligible for workmen's compensation. Although three of four doctors testified that metal shavings likely caused the eye loss, the justices ruled based on the testimony of the only doctor who claimed that it was inconclusive as to whether McCoy would have lost his eye anyway. This testimony seemed weak compared to the strong testimony of Dr. Cushman who declared that, "without any question," injury to the eye from the steel had "lowered the resistance of the eye…and made it less resistant to the infection."[83] The court did not usually reverse decisions made by the Board, but this case involved a man infected with a sexually transmitted disease. The unanimous decision of the court probably reflected judicial views about degenerate diseases and manhood.[84]

Ideas about proper manhood clearly underwrote decisions of early workmen's compensation cases. In the *Jendrus* case, Justice John Stone stated, "It would be a harsh rule that bound an employee who had been injured to accept in all cases the dictum of a surgeon who advises an operation."[85] Stone thus affirmed that working men controlled their bodies and decisions made about their medical care, a privilege that many women did not enjoy.[86] No

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[83] *McCoy v. Michigan Screw Co.*, 180 Mich. 454 (1914).

[84] Ibid.

[85] *Jendrus v. Detroit Steel Products Company*, 178 Mich. 265 (1913).

[86] The U.S. Supreme Court had declared in *Muller v. Oregon* (1908) that working women's bodies could be protected and regulated. Justice Brewer maintained that the state had an interest in women's health and welfare. The decision in *Muller* reflected national attitudes about women's health. Unlike men, the state intervened greatly in decisions regarding women's medical care. Much scholarly attention has been paid to the legislative differential in health laws for men and women. Society mandated that women had to be taken care of, while men handled their own health care issues. Women's maternity was a focus of state legislators. Judith Baer and Julie Novkov show how women's protective labor legislation was marketed as health measures. Judith Baer, *The Chains of Protection: The Judicial Response to Women's Labor Legislation* (Westport: Greenwood Press, 1978); Julie Novkov, *Constituting Workers, Protecting Women: Gender, Law, and Labor in the Progressive and New Deal Years* (Ann Arbor:

mention was made of the state intervening to force medical care on a male worker, which contrasted starkly with the United States Supreme Court decision in *Muller v. Oregon* (1908), wherein the state was said to have a vested interest in women's bodies.[87] It was manly to rule one's body; health and vigor also allowed for wage earning. Stone cited a Scottish lord's opinion, "I hold it to be the duty of the injured workman to submit to such treatment, medical or surgical, as involves no serious risk or suffering, such an operation as a man of ordinarily manly character would undergo for his own good."[88] Ill health, by contrast, was often taken to be evidence of emasculation.

Michigan Supreme Court decisions underscored the idea that real men did not rely on others for support. In his opinion in the *Jendrus* case, Judge John Stone discussed a case involving a watchmaker who lost the use of his finger. The finger could have been fixed with a medical procedure, but the watchmaker refused care. Judge Stone disparagingly remarked that the man must have suffered from "defect of moral courage" or that he was "willing to live on the pittance which he was receiving under the compensation act."[89] In the *Fryezynski* case, Judge Joseph Steere contributed to the valorization of manhood by insisting that rationality was part of the masculine realm. Fryezynski was a "grown man;" as such, he should have known how to use the machine without injuring himself. Justice Steere noted that even women workers assumed

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University of Michigan Press, 2001). Also see, Nancy Woloch, *Muller v. Oregon: A Brief History with Documents* (Boston: Bedford Books of St. Martin's Press, 1996).

[87] *Muller v. Oregon*, 208 U.S. 416 (1908).

[88] *Jendrus v. Detroit Steel Products Company*, 178 Mich. 265 (1913).

[89] Ibid.

responsibility for operating roller machinery.[90] Manhood was marked by common sense capabilities and a taste for hard work.

Manhood was also at issue in *Mackin v. Detroit-Timkin Axle Company* (1915) when an employee sued to have the employer liability and workmen's compensation law declared unconstitutional. The constitutionality of Michigan's employer liability and workmen's compensation law was challenged in *Mackin v. Detroit-Timkin Axle Company* (1915). Thomas Mackin, who worked for Detroit-Timkin Axle Company, brought a wrongful injury suit against the company after an electric shock jolted him off a stepladder.[91] Mackin argued that the law was unconstitutional because it deprived a worker of the right to an attorney, it deprived a parent of right of action for injury to his child, it was class legislation, it gave the Industrial Accident Board judicial powers, it embraced more than one subject, and it covered topics not included in its title. Mackin's argument reflects a working man's dissatisfaction with the law for perceived emasculation. The law, argued Mackin, denied men redress in court and eclipsed patriarchal privileges. The Michigan Supreme Court ruled that the law did not impair Mackin's liberty because he could have elected not to participate; they denied all other claims and validated the law's constitutionality.[92]

Thomas Mackin's complaint exemplifies the turmoil that workers experienced as they tried to navigate seemingly immutable, inherited laws of contract and tort. Justice Joseph Steere asserted in Mackin's case that "a person has no property, no vested interest, in any rule of the common law… . Rights of property which have been created by the common law cannot be

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[90] *Fryezynski v. Rice*, 171 Mich. 113 (1912).

[91] *Mackin v. Detroit-Timkin Axle Co.*, 187 Mich. 8 (1915).

[92] Ibid.

taken away without due process; but the law itself, as a rule of conduct, may be changed at will."[93] In tort, workers could either choose to opt out of the worker compensation insurance program or get paid for the accident and relinquish the ability to place blame on their employer. It was a worker's responsibility to know if his employer had elected to adopt the workmen's compensation program.[94]

Workers had sought employer liability laws in order to gain solid ground upon which to bring tortious actions against their employers.[95] Employer liability laws could have granted power to workers by allowing them to hold their employers responsible for injuries they sustained while laboring. Instead of empowering workers, the law too often deprived them of their day in court against their employer. The law placed workers under state control and made the judiciary the ultimate authority over employment relations and the extent to which claimants fulfilled prevailing conceptions of manhood.

Judicial decisions about Michigan's employer liability and workmen compensation law also reflect tensions over who controlled work relations. Although the law removed automatic assumptions of worker liability, it disadvantaged workers by making it difficult for them to bring tort suits against their employers. The law virtually guaranteed compensation to workers for

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[93] *Mackin v. Detroit-Timkin Axle Co.*, 187 Mich. 8 (1915).

[94] *Public Acts of Michigan*, 1912, Special Session, no. 10, 21-40.

[95] John Witt notes that few injured workers were able to recover in tort actions against their employers until workmen's compensation statutes were enacted in the 1910s. John Witt, "Rethinking the Nineteenth-Century Employment Contract, Again," *Law and History Review* 18 (Autumn 2000), 634.

workplace accidents, but the no-fault nature of the insurance program meant that working men could not personally and individually hold their employers accountable.

In part, reformers had created the law to empower workers, this did not happen. Workers still faced dangerous working conditions and unsafe environments. In 1913, one of the leading reasons that copper miners struck was for safer working conditions; they wanted a return to the two-man drill, as well as other safety measures.[96] Governor Woodbridge Ferris noted in his inaugural address that Michigan laws did not go far enough to protect workers: "A stringent law should be passed for the protection of all workmen engaged in the business of mining, and the employment of the most expert and competent inspectors to enforce the provisions of this law."[97] After the 1913 Copper Strike, Governor Ferris implored the legislature to enact mediation laws that would suit both labor and capital. He advocated expanding the workmen's compensation law to cover contract work, seasonal occupations, and occupational diseases, and to provide medical and hospital services for as long as needed.[98] Working men were not yet in command of their world.

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[96] William Beck, "Labor and Order during the 1913 Copper Strike," *Michigan History* 54 (Winter 1970), 275-292.

[97] Woodbridge Ferris, inaugural address to legislature, January 2, 1913, *Michigan House Journal*, 1st sess., 1913, 26-35.

[98] Woodbridge Ferris, address to legislature, January 7, 1915, *Michigan House Journal*, 1st sess., 1915, 33-46.

Chapter Four

'The man who denies labor's right to organize…denies labor's right to life'[1]

Working Men Organize for Protection

Fifteen thousand copper miners struck on Michigan's Keweenaw Peninsula in July of 1913. They demanded fewer hours, higher wages, safer work conditions, and recognition of the Western Federation of Miners. Carrying signs demanding better terms of labor and the American flag, the striking miners and their wives formed picket lines in front of the main shafts. The first men to break the picket lines were injured by flying rocks.[2] By September of 1913, violence marked most relations between unionists and mine owners. The mine owners petitioned Judge Patrick O'Brien of the Twelfth Circuit Court for an injunction against the Western Federation of Miners. O'Brien complied, but then reversed his decision when union attorney Angus Kerr challenged the ruling.[3] Mine owners appealed to the Michigan Supreme Court for re-issuance of the injunction. The justices were appalled by the reports of "assaults and beatings, threats of bodily harm, intimidations, violence and riotous conduct." Stories of "peaceable citizens" being attacked, mobbed, having their "clothing torn from them, spit upon, coal ashes

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[1] "The Laborer is Worth His Hire," *Detroit Printer*, April 3, 1886.

[2] The 1913 Copper Strike has garnered much scholarly attention. See Larry Lankton, *Hollowed Ground: Copper Mining and Community Building on Lake Superior* (Detroit: Wayne State University Press, 2010). For the role of the Finnish population in the strike, see Gary Kaunonen, *Challenge Accepted* (East Lansing: Michigan State University Press, 2010). Also, see Saronne Rubyan-Ling, "The Michigan Copper Strike of 1913," History Today 48 (March 1998), 47-52; William Beck, "Labor and Order during the 1913 Copper Strike," *Michigan History* 54 (Winter 1970), 275-292.

[3] William Beck, "Labor and Order during the 1913 Copper Strike," *Michigan History* 54 (Winter 1970), 285-286.

and slops thrown on them…even in sight of their wives watching from their homes" caused the Michigan Supreme Court to re-issue the injunction.[4] The labor injunction did not end the violence though.

The violence described in the *Baltic Mining* decision illustrates the extremes to which men could go in search for control through unionization.[5] But why were miners willing to give up their individual control, albeit limited, to the union? Many unionists saw collective action as a means for self-empowerment. Tensions likely arose in part due to conflicting visions of manhood. Employers could not understand why a man would willingly give up the opportunity to make the most money for his individual labor. When Michael Walpole told George Beck, his employer, that wages did "not cut any figure, but it is the scale we want you to sign", Beck probably questioned why a man would choose to negotiate for a union rather than his own higher wages. Walpole may have figured that individuals begged, while union men bargained. Moreover, judges probably were also puzzled by the fact that men would choose to forgo individual contract making and fixing a "price upon their [own] labor" in favor of collective bargaining.[6] Union men were not acting individually; they had fashioned a view of manhood that allowed for collective action to gain self-control.[7]

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[4] *Baltic Mining Co. v. Houghton Circuit Judge*, 177 Mich. 632 (1913).

[5] Ibid.

[6] *Beck v. Railway Teamsters' Protective Union*, 118 Mich. 497 (1898).

[7] Nancy Hewitt stresses the brotherly bonds forged through union membership. Looking at the Cigar Makers' International Union (CMIU), she concludes that the "manliness of craft locals was a direct extension of an exclusively male membership." Due to their Cuban heritage Tampa workers embraced female members, which she asserts caused the CMIU to attack them as unmanly. Unionism was manly. Nancy Hewitt, "The Voice of Virile Labor: Labor Militancy, Community Solidarity, and Gender Identity among Tampa's Latin Workers, 1880-1921," in *Work Engendered: Toward a New History of American Labor* ed. Ava Baron (Ithaca: Cornell University Press, 1991), 142, 142-167. Also, Mary Blewitt shows how economic force in the

Michigan's men joined the labor union movement to achieve much the same goals as unionists elsewhere—but in Michigan, courts managed to capture those efforts and neutralize them with uncommon effectiveness. Judicial decisions regarding the actions of striking workers leading up to and through the 1913 Copper Strike provided an offset to beneficial legislation. State government thwarted laborers' ability to use unions to secure manly objectives. Although state legislators, in the wake of union campaigning removed many constraints on unionization, Michigan justices heightened restrictions through labor injunctions. The labor injunction not only affected unionists' ability to organize for mutual protection, but also restricted working men's characteristic autonomy. By restricting labor organization activities, the judiciary limited labor activists' ability to forge change. In decisions involving unionized work stoppages, the judiciary seized control of public authority over work rules, further diminishing unionists' prospects for self-rule.[8]

Many Michiganians, like men in other jurisdictions, sought control and independence through collective power. As a mill worker had expressed in the 1885 Saginaw Valley Strike, "We want to stick together and then we shall be successful."[9] Working men were not content to

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1870s "gave employers the authority to set new work conditions that influenced workers' conceptions of gender and union strategy." See Mary Blewitt, "Manhood and the Market: The Politics of Gender and Class among the Textile Workers of Fall River, Massachusetts, 1870-1880," in *Work Engendered: Toward a New History of American Labor* ed. Ava Baron (Ithaca: Cornell University Press, 1991), 92, 92-113.

[8] For agreement, see William Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge: Harvard University Press, 1991). Forbath concludes that struggles over labor injunctions challenged not just employer power, but also judicial authority. He notes that the Supreme Court's decision in *In re Debs* showed the court asserting their power by ruling that labor had attempted to exercise power belonging only to the government.

[9] "The Strike Spreading," *Saginaw Daily Courier*, July 9, 1885.

allow businessmen to "permanently incapacitate" them and deny them the "capability of being raised to an honorable station in life."[10] Unionists understood that employers and employees had "great differences of opinion as to the rights of each other," but believed that the rights of man were the rights of labor.[11] A millwright told a Bureau of Labor investigator that he believed the only way to get better wages was "by establishing labor organizations and compelling employers to pay the full value of labor."[12] Michigan labor activists, like others across the nation, found that unrestricted collectivization was difficult to achieve.[13] Molestation and conspiracy acts restricted union activity.[14]

No man would have wanted to seem weak or inferior, but protection for union members was not seen as an unmanly pursuit. Detroit Federation of Labor members united "for the

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[10] "Why Business Men Support the Union," *Detroit Printer*, April 24, 1896.

[11] "Report from the Banquet of Detroit Manufacturers Club," J.W. Van Cleave, *American Craftsman*, December 25, 1897. *Preamble, Constitution, and By-Laws*, Council of Trades and Labor Unions, 1889, Labadie Collection, University of Michigan. Working men saw as their rights: the right of self-ownership, the right to pursue gainful employment, the right to life (including workplace safety), the right to vote without obstruction, the right to participate fully in the free market system (including spending money fittingly), the right to time for moral and intellectual advancements, and civil rights.

[12] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 135-172.

[13] The best works on unionization in Michigan are Richard Oestreicher, *Solidarity and Fragmentation: Working People and Class Consciousness in Detroit, 1875-1900* (Urbana: University of Illinois Press,1986); Steve Babson, *Working Detroit: The Making of a Union Town* (New York: Adama Books, 1984); and Thomas Klug, *The Roots of the Open Shop: Employers, Trade Unions, and Craft Labor Markets in Detroit, 1859-1907* (Ph.D. dissertation, Wayne State University, 1993). Oestreicher points to the problems that Detroit workers faced while attempting to unionize. He concludes that class solidarity and fragmentation intertwined as an outgrowth of urbanization and industrialization, which fractured organization efforts. Babson explores the role of class and race in shaping the working-class culture of Detroit. Klug discusses the problems that workers faced as they struggled to unionize. No one has performed an in-depth study on women and unions in Michigan.

[14] Michigan had both a molestation and a conspiracy act. *Public Acts of Michigan*, 1867, no. 163 and *Public Acts of Michigan*, 1877, no. 11 respectively.

purpose of organizing and concentrating the efforts of the working classes for their own protection, education and social advancement."[15] The Detroit Typographical Union saw unionism as crucial to the preservation of life, "The man who denies labor's right to organize for self-protection denies labor's right to life."[16] Unionists saw protective labor legislation as necessary to "support their manhood" and used union strength to enact protective labor legislation.[17] The state was an instrument for union-supported reform. Unlike legislation enacted for women, where the state held control, labor activists saw the state in a supportive role to the unions.

Union men wanted to "preserve their manhood from all violation and encroachment," so they joined together and "formed a compact for their own protection."[18] Detroit Trade Union members pledged to "assist each other in securing fair wages to the laboring man by all honorable means."[19] Men were supposed to be "natural bread-winners", but the poor wages that accompanied industrial work deterred breadwinning.[20] A typographical worker noted that "Non-union men possess[ed] no freedom of contract on the labor market."[21] They did not sit equally at the bargaining table with employers. In many ways, the wage system rendered them impotent.

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[15] *Constitution and By-Laws*, Detroit Federation of Labor, 1906, Labadie Collection, University of Michigan.

[16] "Editorial," *Detroit Printer*, April 3, 1896.

[17] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1884, 62.

[18] Ibid.

[19] *Declaration of Principles*, Council of Trades and Labor Unions, 1885, Labadie Collection, University of Michigan.

[20] "Natural Breadwinners," *Detroit Printer*, March 13, 1896.

[21] "Editorial," *Detroit Printer*, May 8, 1896.

During the Gilded Age, several unions came to prominence in Michigan. The Grange, or Order of the Patrons of Husbandry, played a strong role in organizing farmers.[22] The first city-central trade union in Michigan was the Detroit Trades Assembly. Formed in 1864 with Richard Trevellick as its president, the DTA later became the Trades' Council of Detroit, a powerful worker organization. Michigan workers organized specifically by trade, until the 1880s, when several chapters of the Knights of Labor formed.[23] By the mid 1880s, the Knights of Labor was the most powerful union in Michigan. The first local chapter of the Knights of Labor, established in 1878, fought relentlessly for hours legislation and to defend worker's manhood.[24] Also, the Council of Trades and Labor Unions aimed "to assist the working people, raise wages, shorten the hours of work both weekly and daily, create safer and more sanitary working conditions, and educate workers in their social and economical rights."[25]

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[22] The best work on the Grange in Michigan is by Ford Trump. Ford Trump, *The Grange in Michigan* (Grand Rapids: Dean Hicks Co., 1963). Donald Marti provides a biographical view of women in the Grange movement through his study of Mary Ann Mayo. Donald Marti, "Woman's Work in the Grange: Mary Ann May of Michigan, 1882-1903," *Agricultural Historical Society* 56 (April 1982), 439-452.

[23] For the Knights of Labor in Michigan, Richard Oestreicher examines the reason for the fall of the Knights of Labor and the quick growth of the organization. Richard Oestreicher, "The Knights of Labor in Michigan: Sources of Growth and Decline" (master's thesis, Michigan State University, 1973). A dated piece, but still valuable, is by Maurice Ramsey. Maurice Ramsey, "The Knights of Labor in Michigan: 1878-1888" (master's thesis, Colleges of the City of Detroit, 1932).

[24] Laura Edwards shows that the Knights of Labor crafted a race-neutral definition of manhood to insists on the equal right of all adult men to political participation. Laura Edwards, *Gendered Strife and Confusion: the Political Culture of Reconstruction* (Urbana: University of Illinois Press, 1997).

[25] *Preamble, Constitution, and By-Laws*, Council of Trades and Labor Unions, 1889, Labadie Collection, University of Michigan.

Each area of labor had its own union, from the Furniture Workers' Union to the Butchers' Union. In the late 1800s, at least 93 unions represented labor throughout the state of Michigan.[26] Some unions that began in Michigan garnered national attention, such as the Brotherhood of Locomotive Engineers, the Hotel and Restaurant Employes National Alliance, and the Retail Clerks' Protective Association. In 1889, Joseph Labadie formed a Michigan chapter of the Federation of Labor and served as its first president.[27] As the Knights of Labor diminished in importance, the Federation of Labor grew in strength. Many labor organizations in Michigan wanted a government agency for labor. Thus, in 1883, Michigan formed a Bureau of Labor. In the same year, the Michigan House of Representatives established a Committee on Labor.[28] The Bureau of Labor, however, never fulfilled the dream of labor leaders that it would represent workers interests at the executive level. Only two Bureau commissioners were labor organization members—Henry Robinson (1891-1893) and Malcolm McLeod (1905-1908). Most of the labor commissioners did not seem to understand the needs of workers.[29]

Workers in every major industry in Michigan struggled for better working conditions. Lumber workers, iron miners, cigar makers, stove makers, printers, furniture makers, railroad workers, printers, and stone masons all struck for higher wages and fewer hours, and often for employer recognition of a union. From 1884-1907, Bureau of Labor records document that

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[26] A study of the annual reports of the Bureau of Labor and Industrial Statistics from 1883-1913 shows at least 93 separate unions active in Michigan.

[27] The best work on the life of Joseph Labadie is Carlotta Anderson, *All-American Anarchist: Joseph A. Labadie and the Labor Movement* (Detroit: Wayne State University Press, 1998).

[28] *Michigan House Journal*, 1st sess., 1883, 142.

[29] Attitude of labor commissioners derived from a careful study of the annual reports of the Bureau of Labor and Industrial Statistics from 1883-1913.

strikes peaked in 1886, 1899, 1900, and 1901. In 1886, the labor commissioner reported thirty-four strikes throughout the state; 68% of the strikes were conducted for fewer hours of labor. In 1899, the Bureau recorded fifty-seven strikes, the majority for wage increases. In 1900, 66% of the thirty-two strikes documented addressed wages in some way. In 1901, of the 58 strikes noted, twenty-one percent were conducted for hours reduction and 57% were carried out over wage disputes.[30] Unions gave either moral or financial support to strikers in the majority of the work stoppages. It is no surprise that employers feared labor organizations; workers united wielded more power than individual men.

To stay relevant and compete with industrialists, male union members became increasingly political.[31] Heightened representation in political circles, where employers held influence, afforded laborers the chance to openly discuss the rights of labor. Unionists claimed "consideration on the ground" that they were "quite capable to act as national beings, and that [they had] acquired a sense of true dignity of [their] nature, and a relish for the enjoyments afforded by [their] higher capacities."[32] By 1885, the Knights of Labor had twelve members

[30] Statistics tabulated from a study of the annual reports of the Bureau of Labor from 1883-1906. The only years that the Bureau did not list any striking activity were 1888, 1889, 1892, 1894, 1897, and 1898. This does mean that no strikes occurred during those years, only that the Bureau did not comment on striking activity. After 1907, the Bureau stopped listing strikes altogether.

[31] Julie Greene, *Pure and Simple Politics: the American Federation of Labor and Political Activism, 1881-1917* (New York: Cambridge University Press, 1998). Greene provides an excellent study of the increasing politicization of the AFL. For an analysis of the marginalization of women in labor unions in the face of bureaucratization, see Elizabeth Faue, *Community of Suffering and Struggle: Women, Men, and the Labor Movement in Minneapolis, 1915-1945* (Chapel Hill: University of North Carolina Press, 1991).

[32] "Why Business Men Support the Union," *Detroit Printer*, April 24,1896.

sitting in Michigan's House of Representatives and three in the Senate.[33] By 1887, thirty-seven members of labor organizations held legislative seats.[34] Labor activists used the political system to protect their interests and craft a labor-focused agenda. At a Labor Day celebration in 1901, labor leader David E. Burns boasted that the legislature had instituted plumbing examinations and barber qualifications, measures that would help professionalize these industries. The Trades and Labor Council crafted a "Justice Court Bill" in Grand Rapids that limited attorney fees and allowed laborers to bring suit without paying an entry or judgment fee.[35] By the beginning of the twentieth century, Michigan unionists attempted to capitalize on the growing sentiment amongst Progressive politicians to glorify vigorous, strong, working men[36] Many working men sought greater political participation.[37] A Michigan worker decreed that "labor demands and labor should have its representatives in the councils of city, county, state, and Nation."[38]

Although many working men voted, they increasingly realized that they did not hold the same political power as their employers and that their political opinions did not carry the same

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[33] Carl Eugene Parry, "Labor Legislation of Michigan" (Ph.D. diss., University of Michigan, 1909), 22.

[34] Ibid., 23.

[35] "Some New Laws Explained," David E. Burns, *Labor Day Souvenir Pamphlet*, Trades and Labor Council, 1901, Labadie Collection, University of Michigan.

[36] Kevin Murphy, *Political Manhood: Red Bloods, Mollycoddles, and the Politics of Progressive Era Reform* (New York: Columbia University Press, 2010).

[37] Not all laborers were enamored with the increasing politicization of labor unions. A cigar maker, Frank Hirth, expounded on the subject, "I belong to the Trades Council…I see nothing but miserable politicians. Knights of Labor are elected to office. What good does it do? Not a bit…They work for their own aggrandizement. Detroit labor organizations are more overrun with miserable politicians than any other city in the country…I am disgusted with the whole labor movement. It is in the hands of politicians, and Knights of Labor politicians are as bad, if not worse, than other politicians." After years of being marginalized by politicians, some workers distrusted the political system. "More Protection," *Labor Leaf*, March 24, 1886.

[38] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 135-170.

weight as those of capital. After all, as a carpenter observed, "a capitalist had the advantage, given him by legislatures and judges."[39] Unionists had secured some positive changes for labor, but challenges remained. They had "practically protected themselves as producers, but not as consumers and citizens."[40] Asserting further control over their conditions of labor was necessary in order for laborers to gain full freedom. With union strength, workers could fulfill their "duty to use [their] influence with the law-making power."[41]

The state had much to say about labor problems. Public policy stressing the need for a maternal state to "care most tenderly for her unfortunate children" marked the dependency of the laboring class.[42] Governor Josiah Begole noted that paupers, criminals, and animals were all cared for, but workers had "no one whose especial duty it [was] to investigate their condition, and report what legislation [was] necessary for the protection of their interests."[43] In 1887, Governor Cyrus Luce warned that "discontented labor renders capital cautious and timid, and this timidity reacts and injures labor."[44] He charged the legislature with the duty of removing "unnecessary burdens from the toilers."[45] Ideas that would enhance worker participation in politics to protect their own interests were not advanced. Although not encouraging additional labor presence in the legislature, Governor John Rich advocated making labor organizations

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[39] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1886, 135-172.

[40] *Constitution and By-Laws*, Detroit Federation of Labor, 1906, Labadie Collection, University of Michigan.

[41] *Declaration of Principles*, Detroit Federation of Labor, 1885, Labadie Collection, University of Michigan.

[42] Josiah W. Begole, Inaugural Address, *Michigan Senate Journal*, 1st sess., 1883, 57-64.

[43] Ibid.

[44] Cyrus G. Luce, Inaugural Address, *Michigan House Journal*, 1st sess., 1887, 44-56.

[45] Ibid.

corporations so that they could settle disputes through the courts.[46] Incorporation of unions meant that their members were held accountable in the same manner as other corporations.

Legislation and judicial determinations played a crucial role in shaping labor unions.[47] By dictating what were legal and unlawful combinations, legislators made unions easier to control. Before any unions gained power, Michigan legislators enacted laws that allowed for their incorporation, thus molding them into a structure that would be as governable as any other corporation. Christopher Tomlins explains that corporate status shifted the right and burden of accountability from individual members to the group.[48] In 1866, Congress enacted a federal incorporation statute for unions.[49] Unions were held to the same restrictions as other corporations, but unlike members of other corporations, members of unions were held to stricter standards as Michigan judges applied conspiracy laws to unions more than to corporate

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[46] John T. Rich, Address to the Legislature, *Joint Documents of the State of Michigan*, 1894, 3-21.

[47] Victoria Hattam argues that "a strong judiciary created a politically weak labor movement in the United States." She explains that judicial determination of labor conspiracy laws played the strongest role in determining the course of the labor movement. Victoria Hattam, *Labor Visions and State Power: The Origins of Business Unionism in the United States* (Princeton: Princeton University Press, 1993), ix. William Forbath argues that labor injunctions were more important in changing the labor movement's ideological outlook. Both agree that, by the 1920s, judicial hostility to unionism caused unions to abandon change through legislative action. They maintain that it was the common law and the judges who interpreted and administered it that shaped labor's political strategies. This stance differs from earlier scholarly views that discussed American culture, ethnic diversity, or economic mobility as defining reasons for labor union strategic change. William Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge: Harvard University Press, 1991).

[48] Christopher Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880-1960,* (New York: Cambridge University Press, 1985). At first unions supported incorporation. The AFL thought that they would better enforce contracts as corporations. In the end, the dangers of incorporation outweighed the benefits; labor unions retreated from supporting incorporation.

[49] "Incorporation of National Trade Unions," 49th Congress, 2nd sess., 1886, House report 6299.

monopolies. As the Knights of Labor started to gain power, Michigan enacted a law to provide for its incorporation, thus making it a corporate entity that would fall under corporate laws.[50] The legislature continued to incorporate all societies that promoted the interests of labor.[51]

In 1891, after union campaigning, Michigan legislators crafted two laws to advance the cause of labor unions. One law provided for the protection of the union label, which enhanced the status of unions by legally recognizing their prerogative to designate union-made products.[52] The law estopped persons from fraudulently affixing union labels or trademarks to goods not made by union members. Unionists decreed that the "infamous Baker Conspiracy law must be repealed."[53] They succeeded when legislators reversed the Baker act in 1891. The *Detroit Free Press* suggested that the senators did not understand the spirit of the bill when passing it. A reporter asserted: "There was no debate upon this important measure, which has been upon the statute books for about fifteen years. Judging from the vote the purpose of the act was not well understood."[54] Regardless, workers were no longer prohibited from obstructing the regular operation or conduct of businesses.[55] Unionists rejoiced, thinking that this law would protect collective activity.[56]

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[50] *Public Acts of Michigan*, 1883, no. 159, 171-172.

[51] *Public Acts of Michigan*, 1885, no. 145, 163-164.

[52] *Public Acts of Michigan*, 1891, no. 41, 39-40.

[53] "The Ten-Hour Law: Its Evasion by the Slave Drivers of Michigan," *Labor Leaf*, September 30, 1885.

[54] "The Senate Passes the Bill Repealing the Baker Conspiracy Law," *Detroit Free Press*, March 31, 1891.

[55] *Public Acts of Michigan*, 1891, no. 23, 22.

[56] In the twentieth century, the legislature restricted unionization once again. *Public Acts of Michigan*, 1905, no. 329. This law prohibited "all agreements, contracts, and combinations in

Celebration over this legislative coup was short-lived. In 1898, the Michigan Supreme Court heard a case that involved the new-fangled labor injunction.[57] Judges ordered labor injunctions to force union members to cease and desist from striking, picketing, and boycotting. The injunction was used to protect the property rights of an individual or business engaged in interstate trade. Although labor injunctions protected businesses, they violated state-mandated rights of workers to engage in union activities by condemning certain actions as illegal. Judges reasoned that property rights had federal constitutional protection, which trumped state law. Labor injunctions categorized unionists as a class of people monopolizing power illegally. Judicial interference in labor strikes weakened union strength and deprived members of the ability to take action regarding their working conditions.

The case that set the stage for the labor injunction in Michigan was *Beck v. Railway Teamsters Protective Union* (1898).[58] Jacob Beck and Sons manufactured and milled cereal products. Teamsters approached the company's owners to adopt a union scale for wages paid to teamsters for single or double wagons. For the men, union recognition was the ultimate goal, not higher wages. "The wages do not cut any figure, but it is the scale we want you to sign," said the

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restraint of trade or commerce" even if a person had a reasonable reason for doing so; *Public Acts of Michigan*, 1919, no. 255, 452-453; prohibited political advocacy and organization.

[57] *Beck v. Railway Teamsters' Protective Union*, 118 Mich. 497 (1898). William Forbath demonstrates that judge-made law caused the labor movement to change its focus. Labor injunctions and invalidated labor legislation taught workers that the judiciary was not going to cede control of work rules to them. He contends that when organized labor challenged the court's power that the judiciary reacted accordingly to the threat by issuing the labor injunction. Forbath holds the labor injunction to blame for why unions did not press for further protective legislation into the twentieth century. William Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge: Harvard University Press, 1991).

[58] *Beck v. Railway Teamsters' Protective Union*, 118 Mich. 497 (1898).

Teamsters.[59] Beck and Sons refused to adopt the union scale for all Teamsters. Subsequently, members of the Teamsters' Protective Union went on strike, picketed Beck and Sons, and distributed a circular listing the companies with whom Beck and Sons conducted business. The Teamsters asked supporters of the union to boycott these places of business. The owners of Beck and Sons petitioned the court for an injunction to stop picketing and distribution of boycotting circulars. The court ruled that the Teamsters engaged in a criminal conspiracy by unlawfully combining to cause the mill owners irreparable damage.[60] The judges asserted that picketing and spreading boycott circulars intimidated and coerced persons wishing to work and deprived owners of trade. Michigan justices deemed boycotting unlawful because it was an attempt to cut off supplies and punish the company's customers.[61]

The *Beck* decision denied union men liberty. Judge Claudius Grant stated, "The law protects them in the right to employ whom they please, at prices they and their employees can agree upon, and to discharge them at the expiration of their term of service or for violation of their contracts. This right must be maintained, or personal liberty is a sham."[62] In Grant's view, man's most important right was personal liberty. He indicated that the Teamsters had not recognizing the importance of liberty of contract. Perhaps Grant did not recognize that working men were not able to freely contract their labor. Union men then were emasculated by a judicial decision that reinforced their dependency.[63]

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[59] *Beck v. Railway Teamsters' Protective Union*, 118 Mich. 497 (1898).

[60] Ibid.

[61] Ibid.

[62] Ibid.

[63] William Forbath, Victoria Hattam, and Karen Orren suggest that judicial interpretation of labor laws was not mere hostility towards labor or favoritism towards capital, but was part of the

By denying Teamsters the ability to strike, picket, or boycott against their employers, Michigan justices reinforced industrialists' superiority. Employers already mandated too many aspects of their laborers lives. Workers fought against "making children out of men by its [corporate] paternalistic policies"; they wanted to maintain one of the essential attributes of manhood, patriarchy.[64] Paternalistic attitudes towards workers diminished worker self-determination. "As a general proposition," stated one worker, "unless there was some kind of compulsion, comparatively few average workingmen would have anything to do with a plan which seemed to have back of it the spirit of patronage or paternalism."[65] Unfortunately for workers, in most industries "the spirit of patronage or paternalism" governed their working lives.[66]

In the *Beck* case, the justices touched upon the meaning of manhood. Manhood was marked by individual actions, not collective. By issuing a labor injunction that restricted Teamsters from "impeding, obstructing, or interfering" with Beck and Sons' business, the justices restrained unionization.[67] By controlling the manner in which Teamsters acted, the judiciary restricted their autonomy. By not allowing the Teamsters to boycott, Judge Grant limited their power to dispose of their income as they saw fit. Grant's indictment of the Teamsters' language

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evolving role of the judiciary in regard to the legislature. See generally, William Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge: Harvard University Press, 1991); Victoria Hattam, *Labor Visions and State Power: The Origins of Business Unionism in the United States* (Princeton: Princeton University Press, 1993); Karen Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States* (New York: Cambridge University Press, 1991).

[64] *Detroit Journal*, August 30, 1888.

[65] *Outlook*, March 1908, 553-554.

[66] Ibid.

[67] *Beck v. Railway Teamsters' Protective Union*, 118 Mich. 497 (1898).

provides interesting insight into the judiciary's construction of masculinity. "Their conduct and threats," Grant noted, "were in some instances accompanied by language too filthy to print."[68] They may have been men, but they were not acting like gentlemen. Grant also took issue with the Teamsters' use of nonverbal threats, "threats in language are not the only threats recognized by law. Covert and unspoken threats may be just as effective as spoken threats."[69]

Employer associations existed to combat union pressure; providing employers with another weapon in their arsenal against unionization. Although the Michigan judiciary made capital-friendly decisions, employers wanted more—the elimination of labor unions.[70] The Furniture Manufacturers Association of Grand Rapids and the Employers' Association of Detroit formed the two most powerful employer associations in Michigan. Although the Detroit Employers' Association prevented discrimination against men because of membership in societies or organizations; it was well-known that its companies would not be pressured to close their shops.[71] "Since the employer is responsible for the work turned out by his workmen," asserted the Employers' Association, "he must have full discretion to designate the men he considers competent to perform the work and to determine the methods under which that work shall be performed."[72] Furthermore, "no limitation by any organization [would] be permitted or

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[68] *Beck v. Railway Teamsters' Protective Union*, 118 Mich. 497 (1898).

[69] Ibid.

[70] Thomas Klug asserts that employer associations influenced judges and legislators. Klug also highlights the struggle that workers faced while attempting to unionize Detroit industry. Thomas Klug, *The Roots of the Open Shop: Employers, Trade Unions, and Craft Labor Markets in Detroit, 1859-1907* (Ph.D. diss., Wayne State University, 1993).

[71] "Principles of the Employers' Association," *Detroit Saturday Night*, April 22, 1911 in Jacob Solin, "The Detroit Federation of Labor, 1900-1920" (MA thesis, Wayne State University, 1939), appendix II.

[72] Ibid.

tolerated."[73] By claiming that "it [was] the privilege of both the employer and the employee" to end employment contracts, Detroit employers reinforced their vision of manhood marked by individual contract making.

Worker frustration over the actions of the Grand Rapids Furniture Manufacturers Association erupted into a four-month strike.[74] By 1910, Grand Rapids was the furniture capital of America. Manufacturers in the city built a tenth of all furniture in the United States.[75] The Furniture Manufactures Association consisted of fifty-four companies that employed 7,250 workers.[76] In the spring of 1911, the United Brotherhood of Carpenters and Joiners approached the Furniture Manufacturers Association (FMA) and asked for a raise in wages, a nine-hour day with ten-hour pay, replacement of piecework with minimum wage, and the right to bargain collectively. The FMA refused to negotiate with the union and two-thirds of the workers in the furniture industry of Grand Rapids walked off the job. United Brotherhood members agreed to arbitration, but the employers refused; the FMA insisted on absolute control. The FMA petitioned for and received an injunction against picketers. In the end, a new city charter diminished the influence of the mayor, who had spoken out in favor of labor, and gerrymandered the districts to diminish the influence of Polish bloc voting (Poles were known labor

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[73] "Principles of the Employers' Association," *Detroit Saturday Night*, April 22, 1911 in Jacob Solin, "The Detroit Federation of Labor, 1900-1920" (MA thesis, Wayne State University, 1939), appendix II.

[74] The best study of this strike is Jeffrey Kleiman, "The Great Strike: Religion, Labor, and Reform in Grand Rapids, Michigan, 1890-1916" (Ph.D. diss., Michigan State University, 1985).

[75] For information about the Grand Rapids furniture industry see, Francis Blouin, Jr., "Not Just Automobiles: Contributions of Michigan to the National Economy," in *Michigan: Visions of Our Past*, ed. Richard Hathaway (East Lansing: Michigan State University Press, 1989),151-168.

[76] Mary P. Erdmans, "The Poles, the Dutch, and the Grand Rapids Furniture Strike of 1911," *Polish American Studies* 62 (Autumn 2005), 5-22.

sympathizers).[77] Employer control, ethnic division amongst the workers, and loss of community support led to the strike's demise.[78] Against the industrial giant, the majority of the workers chose to continue working in the furniture industry with some provisions for security at the expense of personal liberty.[79]

One of the nation's most violent clashes between labor and capital took place in the copper country of Michigan's Upper Peninsula in 1913.[80]

> Idyllic are the tales they tell of industry and contentment and prosperity in the famed copper country of Michigan; of the happy people dwelling peacefully amid the conveniences of cultured civilization welded onto the scarcely contaminated, soul-inspiring freshness of nature; of the benevolent paternalism which made the relations of "the Company" seem almost more than patriarchal and approaching the kindly despotic—before the strike.[81]

Employer paternalism in the lumbering and manufacturing industries paled in comparison to that of the mining industry. Employers feared that worker revolt would cripple their businesses. To keep order, employers used a system of paternalism and force.[82] Consequently, both lumber

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[77] For a study on Grand Rapids mayor, George Ellis, during the time of the strike, see Anthony Travis, "Mayor George Ellis: Grand Rapids Political Boss and Progressive Reformer," *Michigan History* 58 (Summer 1974), 101-130.

[78] For a discussion of the role of Poles in the strike, see Mary P. Erdmans, "The Poles, the Dutch, and the Grand Rapids Furniture Strike of 1911," *Polish American Studies* 62 (Autumn 2005), 5-22.

[79] Jeffrey Kleiman, "The Great Strike: Religion, Labor, and Reform in Grand Rapids, Michigan, 1890-1916" (Ph.D. diss., Michigan State University, 1985).

[80] For the 1913 Copper Strike, see Arthur Thurner, *Rebels on the Range: The Michigan Copper Miners' Strike of 1913-1914* (Lake Linden: John H. Forster Press, 1998).

[81] Francis John Dyer, "The Truth about the Copper Strike," *National Magazine* 40 (May 1914), 235.

[82] Andrea Tone, *The Business of Benevolence: Industrial Paternalism in Progressive America* (Ithaca: Cornell University Press, 1997). Tone argues that businessmen stood united in their animosity toward social welfare and labor legislation. Benevolent actions by capital were efforts

workers and miners rebelled against this benevolent but oppressive order.[83] The Knights of Labor explained that paternalism "exercised by the natural father over his own minor children is tempered by affection and justifies itself, but [paternalism] exercised by usurpers over their natural equal and superiors [was] an oppressive wrong, and the most intolerable of all outrages."[84] Paternalistic actions unmanned the miners.

Copper mining was one of Michigan's most prominent industries. Between 1860 and 1880, refined copper output tripled.[85] The copper industry encouraged a more efficient transportation system in Michigan. From 1847-1887, Michigan produced more copper than any other state, at times 90% of the nation's total.[86] In 1871, the Calumet and Hecla mines combined and became an industry giant. By the turn of the century, the upper peninsula produced 200 million pounds.[87]

Copper barons built and funded cities around their mines. Since the upper peninsula was isolated from lower Michigan, those who lived in the copper towns were completely dependent

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to avoid legal force. Prevailing ideologies underwrote employer' paternalism. The "Gospel of Wealth" admonished employers to care for their dependent employees. Social Darwinism provided philosophical rationalization for racism, imperialism, and capitalism. Herbert Spencer, *Social Statics* (New York: Appleton and Co., 1865); Andrew Carnegie, "Wealth," *North American Review* 148 (June 1889), 653-662.

[83] Karen Orren argues that feudalism persisted in America until the New Deal—not figuratively, but literally. She states that master/servant common law doctrine of the 19th century carried over from Tudor England and regulated employment into the 1930s. Karen Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States* (New York: Cambridge University Press, 1991).

[84] "Poverty Again Crushed by Wealth," *Labor Leaf*, September 30, 1885.

[85] Willis Dunbar and George May, *Michigan: A History of the Wolverine State* (Grand Rapids: William B. Eerdmans Publishing Co., 1995), 357.

[86] Ibid., 358.

[87] Ibid., 358.

on the companies. The copper companies supported not just their share holders (who received dividend payments of $90,316,000 from 1885-1904), but also mining company employees, farmers, merchants, clerks, manufacturers, and professionals.[88] Most of the people living in the upper peninsula of Michigan owed their livelihood to the mining industry—and the owners were not likely to let them forget it. Mining companies offered company land for worker housing, houses of worship, medical care, educational opportunities, and entertainment venues, as well as farming and pasture land. Opera houses and theaters hosted some of the best theatrical troupes in the nation; renowned actress Sarah Bernhardt performed in Copper Country. Companies offered English instruction to their employees to help assimilate foreign workers into American culture and discourage ethnic enclaves.[89] As a visitor to the area observed, "a condition of benevolent feudalism" existed in the region.[90] Paternalism arose out of necessity, but survived because owners "discovered paternalism to be useful in manipulating workers' behavior and in controlling mining costs."[91]

Employers controlled the housing market: miners owned their homes, but leased the land. The leases contained extremely harsh provisions for eviction and repossession if a worker should become troublesome. The threat of homelessness in the cold, harsh conditions of upper Michigan usually suppressed labor dissent. The land upon which workers grew their food and grazed their livestock was also company-owned. Troublesome miners faced starvation and

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[88] Dunbar and May, *Michigan: a History*, 359.

[89] Ibid., 360.

[90] U.S. Department of Labor investigator quoted in Doris McLaughlin, *Michigan Labor: A Brief History from 1818 to the Present* (Ann Arbor: Institute of Labor and Industrial Relations, 1970), 80.

[91] Larry Lankton, "Paternalism and Social Control in the Lake Superior Copper Mines," *Upper Midwest History* 5 (January 1985), 1.

hypothermia if they angered their bosses. To make dependency even more appealing, the owners leased land at an extremely discounted rate. Workers could not find comparable land for anything close to company prices, nor could they find open land near their workplaces. By 1913, workers rented 3,339 houses and owned 1,750 homes on leased company land.[92]

By the twentieth century, mining had changed from surface mining to dangerous underground mining in search of rich conglomerate lodes. Underground miners used explosives and spent long hours deep under the earth with little fresh air. Competition from other mining companies made Michigan mine owners adopt new technologies and push their workers for greater efficiency. The adoption of the one-man drill upset many workers. Using the one-man drill was more dangerous, as miners did not have a partner nearby to help in the case of injury. A miner, Hubert Lux, called the one-man drill "absolutely dangerous and destructive of health and manhood."[93] Moreover, the one-man drill needed half the workforce.

Throughout the nineteenth century, copper barons avoided worker unionization, but changing circumstances caused mine owners to lose the strict hold that they held over their miners' actions. By 1913, "benevolent despots" no longer led the workers.[94] As mining ventures increased, so did the number of miners. There was not enough company-owned housing to accommodate laborers and their families. Over 14,000 laborers mined the area; a conservative estimate showed that only half of all mine employees lived in company housing.[95] Those who

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[92] Lankton, "Paternalism and Social Control," 4.

[93] Testimony of Hubert Lux, U.S. Congress, House, Committee on Mines and Mining, *Conditions in the Copper Mines of Michigan*, 63rd Congress, 1914.

[94] Francis John Dyer, "The Truth about the Copper Strike," *National Magazine* 40 (May 1914), 235.

[95] Lankton, "Paternalism and Social Control," 4.

lived in company housing were among the most skilled and best-paid. But those who paid for their own housing were not as easily manipulated and less likely to be loyal to a repressive copper baron.

Loss of control over employment contracts contributed to worker dissatisfaction. Throughout the nineteenth century, miners worked under monthly contracts. Miners picked their coworkers, negotiated their contracts, and worked with little direct supervision. As Larry Lankton argues, "The contract miners, then, wore a veneer of dignity and independence that tended to prop up their sense of freedom and self-esteem and to mute any sense of exploitation."[96] As this freedom changed, miners lost control over the terms of their employment. By 1909, companies operated bureaucratically; men received employment numbers and personal contact between managers and workers waned. When workers complained, employers responded with sterner means of control, which deepened labor discontent.

Looking to regain lost control over employment contracts, many miners joined the Western Federation of Miners (WFM). As fewer miners received housing and land benefits, they questioned their status as employees. Were housing, education, and healthcare a benefit of employment, or a bribe? If these were fringe benefits of employment, why were they not made available to all employees of the same trade? The WFM promised workers bargaining strength so that miners could negotiate for equitable benefits, better pay, shorter hours, and safer working conditions. By the summer of 1913, the WFM "claimed nine thousand members in the region, with 98% of them voting in favor of the strike."[97]

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[96] Lankton, "Paternalism and Social Control," 13.

[97] Michigan Technological University, Michigan Tech Archives and Copper Country Historical Collections, "Copper Mine Strike of 1913-1914," http://www.hu.mtu.edu/vup/Strike/, accessed May 13, 2012.

Two weeks before the strike began, Houghton county sheriff, James Cruse, entered into negotiations with James Waddell of the New York Waddell-Mahon Detective Agency. Waddell men were known for breaking strikes with force, much as the Pinkerton men had done in the Saginaw Valley nearly three decades before. Cruse brought in fifty-two Waddell agents to act as "secret service" operatives.[98] The Waddell men were given considerable autonomy and a blanket license to carry firearms. Local attorneys Angus Kerr and Edward LeGendre tried to enjoin the Waddell men, but were denied an injunction. The subsequent violence at the hands of Sheriff Cruse and the Waddell men was tragic.[99]

Before the strike started, the Western Federation of Miners sent all local mining companies a letter asking that mine owners negotiate with the union. The WFM warned of a strike in the event of negotiation avoidance or failure. The companies refused to respond to the union's request. Since mine owners had previously fought off worker organization through manipulation, threats, and false benevolence, they did not take the threat of a strike seriously. Mine owners may have created a "kind of paternalism that kill [ed] unionism," but they did not realize that mining industry growth had weakened their control.[100] On July 23, 1913, the workers stopped mining. All but two small mines closed and 14, 500 men walked away from their job sites.[101] Miners demanded an eight-hour day, improvement of working conditions,

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[98] For violence at the hands of men who were supposed to keep law and order see, William Beck, "Labor and Order during the 1913 Copper Strike," *Michigan History* 54 (Winter 1970), 275-292.

[99] Newspapers and Congressional testimonies provide hundreds of accounts of violence during the strike.

[100] Claude T. Rice "Labor Conditions at Calumet and Hecla" *Engineering and Mining Journal* (December 23, 1911), 1235.

[101] Michigan Technological University, Michigan Tech Archives and Copper Country Historical Collections, "Copper Mine Strike of 1913-1914," http://www.hu.mtu.edu/vup/Strike/, accessed May 13, 2012.

elimination of the one-man drill, $3.00 minimum wages per day, and recognition of the Western Federation of Miners.[102] "Only one thing appeared to be lacking," noted an United States Department of Labor investigator visiting the area, "and that was the right of the workers to be free men in every sense of the word."[103] By striking, the miners attempted to emancipate themselves from copper baron control.

If successful, striking workers would enjoy a higher standard of living. Better wages, including a minimum wage, would allow the men to better manage their finances and support their families. Shorter hours would allow leisure time to pursue education, tend to household duties, or bond with family. Eliminating the one-man drill allowed safer working conditions, reduced miner's sense of isolation, and minimized workforce layoffs. Perhaps the most important demand was the call for union recognition. If mine owners accepted this demand, workers would gain both strength through solidarity and a more equitable division of power.

Almost at once, the strike turned violent.[104] Striking miners held parades that hindered strikebreakers' ability to get to the mines, while intimidation and threats flew in all directions.[105] Baltic Mining Company turned to Patrick O'Brien, Houghton Circuit Court judge, for an injunction against the strikers. Although Judge O'Brien thought the grounds upon which the

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[102] U.S. Congress, House, Committee on Mines and Mining, *Conditions in the Copper Mines of Michigan*, 63rd Congress, 1914, 9-11.

[103] U.S. Department of Labor investigator, quoted in Doris McLaughlin, *Michigan Labor: A Brief History from 1818 to the Present* (Ann Arbor: Institute of Labor and Industrial Relations, 1970), 80.

[104] Liz Faue observes, "the term 'strike' means to hit…and violent struggle was a legitimate way for men to effect change." Elizabeth Faue, "Paths of Unionization: Community, Bureaucracy, and Gender in the Minneapolis Labor Movement in the 1930s," in *Work Engendered: Toward a New History of American Labor*, ed. Ava Baron, 296-319 (Ithaca: Cornell University Press, 1991), 300.

[105] *Baltic Mining Co. v. Houghton Circuit Judge*, 177 Mich. 632 (1913).

complainants based their request were overly broad and denied their plea, the Michigan Supreme Court vacated his order. The justices indicated that had the strike been lawful, an injunction would not have been necessary, but since there were "parades directed to and loitering at and around the premises of complainants or the homes of their employees" instead of "peaceable meeting and parading," an injunction was warranted.[106] Because the majority of miners lived on company land, this definition of unlawful picketing meant that anywhere strikers marched would be considered out of bounds.

When the justices heard the complaint of the mine owners, they addressed allegations of ungentlemanly conduct. They were horrified that the striking men had acted violently "in many instances too numerous to mention" and had done this "with their wives and other women of their families." Miners' wives had attacked strikebreakers with "brooms dipped in filth of the worst description."[107] The justices were appalled that women were going ungoverned. Men were acting unmanly by not keeping their wives in control.

Violence, intimidation, death, and incarceration were the prices that workers paid for attempting to unionize during the 1913 Copper Strike.[108] Active members of the Western

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[106] *Baltic Mining Co. v. Houghton Circuit Judge*, 177 Mich. 632 (1913).

[107] Ibid.

[108] Many labor historians make note of strikebreakers when discussing labor conflicts, but there are a few articles and a monograph that highlight the problem of violence. Stephen Norwood, *Strikebreaking and Intimidation: Mercenaries and Masculinity in the Twentieth Century* (Chapel Hill: University of North Carolina Press, 2002). Norwood provides interesting insight into why men chose to become strikebreakers and the correlations between violence and masculinity. Private detectives were not actually investigators, but were instead hired guns used to break strikes and workers morale. Arthur Thurner's article on Charles Moyer, president of the Western Federation of Miners discusses the violence that Moyer faced during the 1913 Copper Strike. Thurner speculates that Moyer may have welcomed confrontations because as a child he was weak and asthmatic. Arthur Thurner, "Charles H. Moyer and the Michigan Copper Strike, 1913-1914," *Michigan Historical Review* 17 (Fall 1991), 1-19.

Federation of Miners suffered the worst abuse. Companies blacklisted union members; vigilantes or law enforcement officers attacked their families. Charles Takkimen, a president of a local WFM chapter, was denied his pay, blacklisted from his company, and forced to endure a late-night search by Waddell men.[109] Margaret Cibacca and her husband suffered the loss of a child because of the treatment of Sheriff Cruse and his deputies.[110] Sheriff deputies rounded up WFM members, jailed them without arraignments or cause for arrest, searched their homes without warrants, and brutalized them. "They took from me my union membership card, and then they beat me," Waino Tikkanen testified, "they hit me on the mouth, on the back of the neck, and on my ribs with their clubs; then I was kicked in the rear, and then I was taken by train, and then they took me to the Houghton jail."[111] Henry Kettunen described a warrantless search: "as soon as the door was opened they pointed their revolvers at us and that was all the license they showed."[112]

Although brutalization, false imprisonment, and denial of civil rights aggrieved the striking miners, the worst offense of the police officers was the interrogation and intimidation of

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The best accounting of violence in the 1913 Copper Strike is William Beck, "Labor and Order during the 1913 Copper Strike," *Michigan History* 54 (Winter 1970), 275-292. Beck likens the Citizen's Alliance to a vigilante organization comprised of townspeople who derived their livelihood from the success of copper mining. These merchants and professionals organized as a group to intimidate strikers and their families. Armed with firearms and star-shaped badges, these vigilantes patrolled the streets to keep order during the strike. They often did more to disturb the peace than to keep it.

[109] Testimony of Charles Takkimen, U.S. Congress, House, Committee on Mines and Mining, *Conditions in the Copper Mines of Michigan*, 63rd Congress, 1914.

[110] Testimony of Margaret Cibacca, U.S. Congress, House, Committee on Mines and Mining, *Conditions in the Copper Mines of Michigan*, 63rd Congress, 1914.

[111] Testimony of Waino Tikkanen, U.S. Congress, House, Committee on Mines and Mining, *Conditions in the Copper Mines of Michigan*, 63rd Congress, 1914.

[112] Testimony of Henry Kettunen, U.S. Congress, House, Committee on Mines and Mining, *Conditions in the Copper Mines of Michigan*, 63rd Congress, 1914.

the striker's families. Women's bodies were used to punish men who were too zealously involved in union agitation. The strikers could not fulfill their manly role of protector, a duty of their sex. Numerous wives testified that they were frightened by police officials. Mrs. Amerigo Monticelly told Congress of a raid on her home, "I got scared and started to cry, and also the children were crying. The deputy came over by me and pointed a revolver to me to my face and told me to shut up."[113] Police officers deliberately scared women and children to send the miners a message, they were not man enough to protect their families.

The Cibacca family endured a particularly awful incident. The police had hastened Margaret Cibacca away from her home at 8:00 a.m. in December of 1913 under the guise that she was to attend to an ailing woman at the mining office. When Margaret arrived at the office with her five children in tow, ages three months to six years, she found that she had been summoned under false pretenses. No woman was ill; the deputies had brought her to the office to interrogate and scare her. The deputies questioned her for five hours. The interrogation was punctuated with beatings, Margaret was black and blue for two weeks after.[114] After the grueling questioning, the sheriffs took her to Houghton where they told her she would be jailed for six months. She was forced to leave behind three of her children at the mining office. When she arrived at the Houghton jail, sheriffs questioned her for another half of an hour and then let her go.

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[113] Testimony of Mrs. Amerigo Monticelly, U.S. Congress, House, Committee on Mines and Mining, *Conditions in the Copper Mines of Michigan*, 63rd Congress, 1914.

[114] Testimony of Margaret Cibacca, U.S. Congress, House, Committee on Mines and Mining, *Conditions in the Copper Mines of Michigan*, 63rd Congress, 1914, 648.

The whole scenario was meant not merely to terrorize her, but also to intimidate her husband, a member of the Western Federation of Miners.[115] Owners effectively had warned Cibacca that his family would not be safe if he continued his union membership. The warning turned out to be fatal. The youngest child developed an illness from exposure to the freezing winter cold of the upper peninsula; the baby died within two weeks of his mother's interrogation.[116] Although Margaret Cibacca learned the hard way that her body was a slate upon which anti-union forces could inscribe their rage, the violent incident was not about Margaret—it was meant to emasculate her husband.

The violent actions towards the families of WFM members was extreme; most of the time union opposition was registered through other ways—the most effective source was the judiciary. But company strike-breaking was also an important opposition measure. Violence erupted as mine owners hired private detectives from the Waddell-Mahon agency to bust the strike. Mine owners worried that local police officers and Waddell men would not break the strike. To further intimidate WFM members, copper barons implored the governor, Woodbridge Ferris, to send guardsmen to the area. Although unhappy with the decision to bring in Waddell

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[115] Most literature on the Western Federation of Miners focuses on union chapters in Montana and Colorado. Arthur Thurner has attempted to rectify the absence of Michigan in discussions of the WFM. He notes the importance of the 1913 Copper Strike to national history and the history of the WFM. Arthur Thurner, "Charles H. Moyer and the Michigan Copper Strike, 1913-1914," *Michigan Historical Review* 17 (Fall 1991), 1-19. George Suggs, Jr. provides a thorough study of the Western Federation of Miners and mine owners in Colorado in the early 1900s. George Suggs, Jr., *Colorado's War on Militant Unionism: James H. Peabody and the Western Federation of Miners* (Detroit: Wayne State University Press, 1972). Other interesting studies include: Alan Derickson, *Workers' Health, Workers' Democracy: The Western Miners' Struggle, 1891-1925* (Ithaca: Cornell University Press, 1988) and Mark Wyman, *Hard Rock Epic: Western Miners and the Industrial Revolution, 1860-1910* (Berkeley: University of California Press, 1979).

[116] Testimony of Margaret Cibacca, U.S. Congress, House, Committee on Mines and Mining, *Conditions in the Copper Mines of Michigan*, 63rd Congress, 1914, 648.

men, Governor Ferris agreed that a military presence was needed to keep order and quell rioting. He ordered the entire Michigan National Guard to active duty. Ferris worried that state troops would be used as strike-breakers and counseled against it. This was wise, considering a comment from a high officer in the National Guard who feared that the miners were not capable of controlling themselves. The guardsman stated, "they [mine owners] are not dealing with American citizens. I am satisfied a large proportion of the present population has to be ruled and provided for as the mine operators rule and provide for them. They are not capable of self-government, nor of adopting methods to better themselves."[117]

Protection of property was the main impetus to stopping labor unrest. Just as the government had made sure the militia was ready "to go to Saginaw on 30 minutes notice if required, to aid in suppressing riots and protecting life and property," so the state now prepared its militia forces.[118] Sheriff Cruse encouraged Governor Ferris to send armed guards: "Situation here has become desperate… . Immediate action on your part is the only thing that will prevent greater destruction of property and loss of life."[119] Newspaper reporters tried to defend the use of militia and garner support from citizens, stating, "the militia is not here to intimidate workingmen, but to preserve order and protect life and property."[120] Protecting the lives and property of mine owners was apparently more important than protecting the rights of workers.

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[117] Report of high official of Michigan National Guard quoted in Doris McLaughlin, *Michigan Labor: A Brief History from 1818 to the Present* (Ann Arbor: Institute of Labor and Industrial Relations, 1970), 78.

[118] "Worried Wageworkers," *Saginaw Daily Courier*, July 14, 1885.

[119] Telegram from Sheriff James Cruse to Governor Woodbridge Ferris, July 24, 1913, *Records Relating to the Strike in Copper Mining Industry*, State Archives, Lansing, Michigan.

[120] *Calumet News*, July 29, 1913.

Vigilantism added another danger for the striking miners. To combat the strike and prevent business disruption, townspeople formed a Citizen's Alliance. The Citizen's Alliance met under the guise of maintaining order, but used intimidation and force to try to break up the strike and persecute union leaders.[121] During subsequent Congressional hearings, numerous miners attested to suffering violence at the hands of Citizen's Alliance members. Strikers testified to Congress of harassment, being cheated out of money, horrible working conditions, blacklisting for union affiliation, assault, long hours, noxious fumes, substandard wages, and abuse of wives and children by law officials.[122] The Citizen's Alliance was so intent on ridding the area of the WFM that they ran union president Charles Moyer out of town with a gunshot wound in his back, threatening that he would be lynched if he came back.[123]

The Citizen's Alliance was blamed for the Italian Hall tragedy where over seventy people, mostly children, were trampled to death.[124] The families of striking workers were enjoying a Christmas party on the second floor of the social hall in Calumet when someone (thought to be a Citizen's Alliance member) yelled "fire." The party-goers raced down the stairs to exit the building. The stairwell's doors opened inwardly; panicking to get out, many people died from

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[121] William Beck, "Labor and Order during the 1913 Copper Strike," *Michigan History* 54 (Winter 1970), 275-292.

[122] U.S. Congress, House, Committee on Mines and Mining, *Conditions in the Copper Mines of Michigan*, 63rd Congress, 1914.

[123] Ibid.

[124] Steve Lehto, *Death's Door: The Truth Behind Michigan's Largest Mass Murder* (Troy: Momentum Books, 2006) is the most comprehensive study of the tragedy. Many articles and websites are devoted to the subject. In 2012, documentarians produced a film about the tragedy, "The 1913 Massacre." Since many Finnish people died in the fire, Finnish genealogy websites make comment on the Italian Hall disaster. The archives of Michigan Technological University provide vast resources about the incident. The United States Congress investigated the tragedy while studying the strike; their papers also provide valuable insight.

suffocation or trampling. The stairwell filled with fallen bodies. The tragedy caused an outpouring of sympathy. Pictures of dead children laid out like angels tugged at the community's heartstrings. The funeral drew large numbers of mourners, as small white caskets were paraded down the thoroughfare. At least fifty-one children died.[125]

Although the community united to grieve, the divisiveness of the strike carried on until spring. After being prohibited from picketing, intimidated, and assaulted, the miners went back to work on April 14, 1914. In the end, miners did not win recognition of the union. The strike settlement guaranteed an eight-hour day, $3/day minimum wage, and an opportunity for miners to present grievances through a committee.[126] Former strikers would be allowed to work in the mines again without prejudice against them. Mine owners refused to revert back to the two-man drill.[127] These were small concessions to the bitter and bloodied laborers. The result of the strike reinforced the fact that working men were impotent.

Violence and denial of unionization greatly affected miners in Michigan's copper country. At issue was always manhood. Employers had struck out to undermine unionism, in

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[125] Death toll of children taken from "The Italian Hall Disaster," *Daily Mining Gazette*, December 25, 1913. The paper listed the names (when possible) and ages of all the fallen. The total sum of the deceased does not match other accounts. The paper lists 70 dead, whereas other accounting list between 70 and 73.

[126] "Report of John B. Densmore, Solicitor of the Department of Labor, detailed as Commissioner of Conciliation, on his efforts to secure a settlement of the strike," U.S. Congress, House, Committee on Mines and Mining, *Conditions in the Copper Mines of Michigan*, 63rd Congress, 1914, 167-169.

[127] "Report of John B. Densmore, Solicitor of the Department of Labor, detailed as Commissioner of Conciliation, on his efforts to secure a settlement of the strike," U.S. Congress, House, Committee on Mines and Mining, *Conditions in the Copper Mines of Michigan*, 63rd Congress, 1914, 167-169.

doing so, they hurt working men's chances for protection. Although unionists attempted to use the legal system to effect change, they largely met obstruction. The judiciary, devoted to property right preservation, did not acknowledge the needs of workers, much less their rights; they thwarted working men's efforts toward independence. Judicial decisions made during the strike crippled the Western Federation of Miners and politically marginalized its members. In 1914, the court also held striking members of an iron moulders union in contempt for peaceful picketing.[128]

Unionists continued to fight for workers rights. As Jake Hall has shown, between 1915 and 1921, "the Detroit Federation of Labor led organized workers and their allies in a series of anti-injunction campaigns that dramatically improved organized labor's position in local and state courts."[129] The Wayne County Circuit Court ended the practice of issuing injunctions without hearings long before the rest of the nation adopted the practice. This victory for laborers was a small one at a time when so many elements of the legal system conspired to create a dependent class of working men and women. Union success in ending the process of issuing injunctions proved helpful for only a short time. By the 1920s, union activity in Michigan was waning. Labor unions found their existence threatened by anti-communist paranoia sweeping through the state and the nation. To protect their gains, labor leaders chose a path of least resistance and increasingly agitated against the use of foreign labor, a position that was supported by nativists.

The bloodshed of the 1913 Copper Strike could have been avoided if unionists had been successful in their quest for meaningful labor legislation and judicial protection of their

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[128] *In re Langell*, 178 Mich. 305 (1914).

[129] Jake Hall, "Anti-Injunction Campaigns and the Transformation of Labor Law in Detroit, 1915-1921," *Michigan Historical Review* 36 (Spring 2010), 2.

prerogatives as voters, heads of households, and laborers. Although legislators had enacted laws to provide for worker organization, the judiciary usurped the power of the legislature to restrict union activity. The bench controlled work relations in the place of capital, lawmakers, and workers. The demands of the laborers for reduced hours and fair wages could have been met by legislation in other words, but the judiciary approved protective labor legislation only for women, leaving working men bereft of the tools needed to assert their power and agency.

Chapter Five

'*Women are employed at labor that only necessity should compel men to perform*'[1]

Independent Men and Dependent Women: Gender Difference at the Bar

As primary plaintiff in *Withey v. Bloem* (1910), Hattie Withey contested the constitutionality of Michigan's nine-hour law for women and children.[2] A fifty-year-old woman who supported herself and her blind mother, Withey's employment options had been limited by her sex and now her sex directly threatened her livelihood. Withey had worked at International Seal and Lock Company for four years. Like her fellow plaintiffs, Withey needed her wages to buy food, pay rent, clothe herself, and afford the necessities of life. The need to earn a livelihood compelled the women, seventy-five in all, to bring suit; they had little other means of support. Many of the women cared for parents; others supported children. When the Michigan legislature enacted a nine-hour law for women and children, they reduced women's ability to be self-sufficient. To compete equitably with men in the workforce, these seventy-five female employees petitioned the court to enjoin Isaac Bloem, deputy factory inspector, and Richard

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[1] Michigan Bureau of Labor and Industrial Statistics, *Annual Report*, 1892, 180.

[2] *Withey v. Bloem*, 163 Mich. 419 (1910). The *Withey* case is different than the most recognized case involving hours restrictions for women, *Muller v. Oregon*, 208 U.S. 416 (1908). Curt Muller brought suit because his business was injured due to hours laws, whereas, women brought suit in the *Withey* case because they were directly penalized by the law. Since Curt Muller was an owner and not a worker, much of the literature fails to discuss in great detail how women workers felt about hours legislation. Scholars discuss the fact that the *Muller* decision was not uniformly embraced by women workers, but most attention is given to women's rights activists who decried the verdict of Justice Brewer that women were biologically inferior to men. More scholarly attention is given to the reformers who fomented Oregon's law and those who created the amicus brief that ultimately swayed the court's decision in favor of validation. Although the Michigan Supreme Court followed the same reasoning as the judiciary did in the *Muller* case, the circumstances were not the same. The *Withey* case shows that at least one group of women workers did not want this type of protectionism and they fought to have the law invalidated. It also provides understanding of the underlying beliefs of the judiciary when ruling on protective labor legislation for women and children.

Fletcher, commissioner of labor, to postpone enforcement of Michigan's nine-hour law.[3] The judiciary denied women injunctive relief. Judicial approval of the nine-hour law for women confirmed state control over women's work, as well as their lack of agency.

Michigan public officials controlled the labor of women and children differently than men's. Male unionists approved of state control over women for hours and wages; they saw protective labor legislation for women as distinctly different from the protection they sought.[4] State-controlled protective labor legislation for women did not conflict with the protective structure that labor activists wanted; indeed, it could enhance their control over industrial relations. Union men supported a minimum wage law and nine-hour law for women for self-protection. Minimum wage laws for women meant that women would be less likely to be employed in the place of striking men. The Knights of Labor noted that "there is no justice in paying a woman or child a lower price than a man would get. The only result would be that the man would have to go."[5] Union men did not oppose the nine-hour law for women, in short,

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[3] *Public Acts of Michigan*, 1909, no. 285, 643-656. The law created a department of labor to regulate the employment of labor and restricted hours of work for women and men under the age of 18 to nine-hours a day or fifty-four hours a week. Work in canneries was excluded from this act. No female under the age of 18 could be employed in night work, defined as 6:00 p.m. to 6:00 a.m. The law encompassed numerous other labor acts regarding safety measures. The act prohibited women from working as bartenders or serving liquor. Women could not work where "their health may be injured or morals depraved." Females were also not to be employed in work that required them to remain standing constantly. The act prohibited manufacturing many goods in tenements including clothing, tobacco products, artificial flowers, and fashion accessories. This statute closely mirrored those of other states, see Nancy Woloch, *Muller v. Oregon: A Brief History with Documents* (Boston: St. Martin's Press, 1996).

[4] According to Barbara Welke, "incursions on working-class white men's independence at the end of the nineteenth and early twentieth centuries…made the borders of legal individuality relating to…gender all the more fundamental." Barbara Young Welke, "Law, Personhood, and Citizenship in the Long Nineteenth Century: the Borders of Belonging," in *The Long Nineteenth Century: Cambridge Histories*, ed. Michael Grossberg and Christopher Tomlins, (Cambridge: Cambridge University Press, 2008), 784.

[5] "Government Employment," *Labor Leaf*, October 6, 1886.

because it did not threaten their control. Judicial approval of the nine-hour law for women in *Withey v. Bloem* (1910) defined wage work primarily as the domain of men.[6] Women played a supporting role to their husbands. Labor unions encouraged women to be their husband's helpmates: "make up your minds to help your husbands, for if you do not they cannot expect to get good pay, and your circumstances will be much poorer than they now are."[7]

By the 1890s, many Americans worried that factory work for women would have negative repercussions on society. Society feared that long hours of toil could damage reproduction and that wage work weakened women's morals. As early as 1874, a Massachusetts court affirmed a sixty-hour week for women.[8] Progressive reformers and labor leaders disagreed on who should control reform. Male-centered unions sought reform through their organizations, whereas Progressives argued that labor reform should come to workers as a result of laws. Since most Progressive reformers never fully endorsed unionism, they created their own initiatives to reform women's work conditions through state or municipal action.[9] Although the judiciary

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[6] *Withey v. Bloem*, 163 Mich. 419 (1910).

[7] "Women," *Labor Leaf*, October 7, 1885.

[8] *Commonwealth v. Hamilton Manufacturing Co*., 120 Mass. 383 (1874). Hours laws for women were not consistently validated though; *Ritchie v. People* (1895) proved a blow to reformers when the Illinois high court invalidated an eight-hour day for women. *Ritchie v. People*, 155 Ill. 106 (1895). The *Ritchie* precedent, however, did not govern other state's laws.

[9] Tension arose between the Progressive movement and the labor movement. Ruth O'Brien, "Business Unionism versus Responsible Unionism: Common Law Confusion, the American State, and the Formation of Pre-New Deal Labor Policy," *Law and Social Inquiry* 18 (Spring 1993), 255-296. O'Brien suggests that progressives developed "responsible unionism" as an alternative to business unionism (voluntarism). O'Brien identifies "responsible unionism" as a state where unions were held accountable. She substantiates her claim by showing that progressive state and federal judiciaries used the principles of agency to make unions accountable contracting parties. She argues that once progressives built the foundation of

invalidated most maximum workday legislation for male workers, they were more receptive to state control over women and children. Reformers argued that the state was required to protect its citizens, especially vulnerable women and children who had no political power.[10] Similarly, male-centered trade organizations argued that "more charity should be shown to working women. They should have our encouragement and sympathy…women have no suffrage, no power to enforce their rights."[11]

As citizens wrestled with the social changes that industrialization brought, they had to define woman's place in modern America.[12] Some women eagerly anticipated a new, wage-earning role in industrial society. In the October edition of the 1889 *Ladies Home Journal*, Felicia Holt predicted that "in the coming years woman will compete with and fairly rival the master workman of her time."[13] Holt's prediction was incorrect. Americans chose to make gender a defining factor in the workplace. If a woman had to work outside the home, the *Ladies Home Journal* encouraged women to seek out industries relating to the domestic sphere—

"responsible unionism" that the AFL adopted the model. Responsible unionists allowed state governing of labor-management relations, which resulted in the Norris-LaGuardia Anti-Injunction act of 1932. The Norris-LaGuardia act "caused unions to begin to lose their status as private, voluntary associations." O'Brien, 255.

[10] For Progressive-era reform, see Steven Diner, *A Very Different Age: Americans of the Progressive Era* (New York: Hill and Wag, 1998). Also, Noralee Frankel and Nancy Dye, ed., *Gender, Class, Race, and reform in the Progressive Era* (Lexington: The University Press of Kentucky, 1991).

[11] "Working Women's Bitter Cry," *Labor Leaf*, December 23, 1886.

[12] Historian Susan Lehrer provides a useful look at the relationship between capitalism and patriarchy and woman's place within this framework. Taking a Marxist view, she concludes that to understand woman's relationship to the state one must understand the function women-workers traditionally played in capitalist society. Susan Lehrer, *Origins of Protective Labor Legislation for Women, 1905-1925* (Albany: State University of New York Press, 1987).

[13] Felicia Holt, "A Woman's Plea for Woman," *Ladies Home Journal* 6 (October 1889), 10.

nursing, stenography, dressmaking, beekeeping, doctoring, type-setting, teaching, art, and telegraphy.[14] A woman's place was in the home, but reformers realized that economic necessity forced some women to toil for wages. Reformers usually hoped that women would choose appropriate occupations for their sex. A New York pastor implored his parishioners to consider the working woman's cry of despair: "There are in this city, 125,000 women who are breadwinners, who have no male protectors, no means of support other than their own efforts…dropping into evil habits because they are destitute."[15] The reformer's main concern, therefore, was that woman's work did not inhibit or contradict woman's main duties as mother and caregiver.[16]

The "problem" of working women greatly concerned labor leaders too. The Knights of Labor encouraged state control over women, even as they designed laws to give male workers greater control.[17] On behalf of the American Federation of Labor, Ida Van Etten addressed Detroit workers. She argued that women had "become the competitors of their own husbands,

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[14] *Ladies Home Journal*, monthly series "Women's Chances as Breadwinners," 1891-1892.Men were not encouraged toward any specific realm, although skilled laborers were held in higher esteem. For the role of skilled labor on manhood, see Ava Baron, "An "Other" Side of Gender Antagonism at Work: Men, Boys, and the Remasculinization of Printers' Work, 1830-1920," in *Work Engendered: Toward a New History of American Labor*, ed. Ava Baron, (Ithaca: Cornell University Press, 1991), 47-69. Also, in the same volume, see Mary Blewitt, "Manhood and the Market: The Politics of Gender and Class among the Textile Workers of Fall River, Massachusetts, 1870-1880."

[15] "Working Women's Bitter Cry," *Labor Leaf*, December 23, 1886.

[16] As Judith Baer finds, in the Progressive Era, patriarchal law combined with social and economic forces to perpetuate inequality. Judith Baer, *The Chains of Protection: the Judicial Response to Women's Labor Legislation* (Westport: Greenwood Press, 1978).

[17] This dichotomy between protectionism for women and men can best be seen in the two ten-hour laws for workers enacted in 1885. The Knights of Labor greatly encouraged the adoption of a ten-hour day for workers. The legislature created two laws; a ten-hour law for men that allowed them to contract otherwise and a ten-hour law for women and children.

fathers and brothers, and unconsciously the ally of the manufacturer in lowering the condition of their class."[18] Van Etten called for women to work no more than sixty hours per week, which conveniently corresponded with Michigan's hours law for women. The Knights of Labor wanted an unrestricted ten-hour law for all workers, but Michigan legislators created a ten-hour law for women and children without the contractual provisions of the ten-hour law for men.[19] The union did not have the control that they sought over industrial relations.

The Depression of 1893 provided the impetus for Michigan's first Progressive governor, Hazen Pingree, to support protective labor legislation for women.[20] A former factory worker himself, Pingree owned a successful shoe company in Detroit. In 1889, Detroiters elected Pingree mayor and he set about ending city corruption and cleaning up the city. During the Depression of 1893, Pingree sold his own horse to buy seed for free urban gardens. In 1896, after he was elected governor, Pingree attempted to take his reform measures statewide. At his inauguration, Pingree addressed the need to improve worker conditions, specifically he advocated an eight-hour day.[21] He was also a trust-buster. In his view, "the result of such combinations and consolidations is to destroy competition and this necessitates the employment of children and women to do the work that ought to be performed by able-bodied men with

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[18] Ida Van Etten, "The Condition of Women Workers Under the Present Industrial System," speech, National Convention of the American Federation of Labor, Detroit, MI, (December 8, 1890).

[19] *Public Acts of Michigan*, 1885, no. 39, 37-38(for women) and *Public Acts of Michigan*, 1885, no. 137, 154-155 (for men) respectively. The law for men included a clause that allowed men to contract for longer hours.

[20] For a comprehensive study of Hazen Pingree, see Melvin Holli, *Reform in Detroit: Hazen S. Pingree and Urban Politics* (New York: Oxford University Press, 1969).

[21] Hazen Pingree, inaugural address to legislature, January 12, 1897, *Michigan Senate Journal*, 1897, 52-75.

families."[22] With the economic burden of the Depression still weighing on the state, policy makers started a campaign to remove women from work and empower male breadwinners. Progressive reformers thus encouraged worker protection for women and children and saw women working as a necessary evil. As Commissioner of Labor John McGrath stated, "while the spheres of man and woman are co-equal, they are distinct; that the place of woman was not in the factory, but at the head of household."[23]

Hazen Pingree may have been Michigan's first Progressive politician, but he was certainly not the last. Chase Osborn extolled the virtues of stricter child and female labor laws. After the legislature enacted the nine-hour law (1909) for women, Osborn noted that Michigan needed to take further measures to "improve the conditions under which the masses of our people work and live. Our men and women and children are the State's chief asset after all, and their conservation should be given first attention."[24] Governor Osborn added that "laws regulating the condition under which women and children may be employed should be perfected as much as possible, in the interest of women and children."[25]

Out of the larger Progressive reform movement arose sociological jurisprudence. Judges considered social standards when deciding cases. Louis Brandeis and Josephine Goldmark famously introduced sociological jurisprudence in an amicus brief for *Muller v. Oregon* (1908). In *Muller*, the United States Supreme Court stated that an Oregon law limiting the workday of

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[22] Hazen Pingree, inaugural address to legislature, January 12, 1897, *Michigan Senate Journal*, 1897, 52-75.

[23] "The Labor Report," *Labor Leaf,* April 7, 1886.

[24] Chase Osborn, inaugural address to legislature, January 5, 1911, *Michigan House Journal*, 1911, 68-86.

[25] Ibid.

women was a valid use of state police power to protect the health and welfare of women. The judiciary rejected Curt Muller's argument that the law interfered with women's liberty to contract.[26] Women were unique; therefore, the *Lochner* precedent did not apply to them.[27] To make their argument, Louis Brandeis, Florence Kelley, and Josephine Goldmark analyzed the effect of working conditions on women's health. They found that excessive hours of labor compromised women's reproductive capabilities and health; thus the state needed to intervene to ensure reproduction. The "Brandeis Brief" encouraged the judiciary to take into account the findings of the social sciences.[28]

Protective labor laws legitimized gender constructs and reinforced sex-segregation of work. As Progressive reformers commended men for working hard to support their families, work itself became tied to beliefs about manhood; strenuous labor was manly, vigorous work for women was unacceptable.[29] The *Ladies Home Journal* encouraged women to "keep as far as possible in the feminine line of work."[30] Women who tried to work outside the feminine realm

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[26] *Muller v. Oregon*, 208 U.S. 416 (1908).

[27] *Lochner v. New York*, 198 U.S. 45 (1905). If anyone had questioned that the Supreme Court was engendering law for women differently for men, their decision in *Muller v. Oregon* (1908) laid that question to rest. The decisions of the Supreme Court in *Holden v. Hardy* (1898) and *Lochner v. New York* (1905) show that gender constructs greatly influenced judiciaries. The court decided that hours laws for men were to be upheld only when the employment was dangerous. By validating hours regulation for women in any employment, but only for men in dangerous employment, the court situated gender as a defining factor for workplace protection.

[28] *Muller v. Oregon*, 208 U.S. 416 (1908).

[29] Kevin Murphy argues that middle-class/elite male reformers came to believe that laboring classes "possessed the virile and manly virtues that men of privilege had lost due to the effeminizing influence of cultured civilization" Kevin Murphy, *Political Manhood: Red Bloods, Mollycoddles, and the Politics of Progressive Era Reform* (New York: Columbia University Press, 2008), 3.

[30] Judith Lloyde, "In and After Business Hours," *Ladies Home Journal* 3 (February 1905).

met resistance. By further restricting women's right to contract their labor, the judiciary kept occupational choice as part of male privilege.[31] Laws that prohibited women from working in saloons and other areas deemed "masculine" further restricted women's work.[32]

Labor legislation for women legitimized women's work while it reinforced woman's dependence. Michigan enacted a law that regulated the employment of children, young persons, and women and required that seats be made available to women who worked in factories.[33] By passing this law, legislators sanctioned women's work in factories. The law's requirement of seats for women segregated them as a separate, more delicate class that could not stand on their feet all day and must be provided with special conditions to their employment.

In the 1880s, the Knights of Labor encouraged state governments to create bureaus of labor; reformers trusted these bureaucratic departments as a necessary part of good

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[31] *Bradwell v. Illinois*, 83 U.S. 130 (1873). In this case, Myra Bradwell petitioned the court to allow her admittance to the Illinois state bar. Bradwell had studied law under her husband, had practiced with him, and was the editor of the highly successful *Chicago Legal News*. After successfully passing the state bar exam, she applied for a state license to practice law. The Illinois Supreme Court denied her a license and Bradwell appealed to the U.S. Supreme Court. The justices maintained that the 14th amendment had not created a right to all occupations and Bradwell's appeal was denied.

[32] *Public Acts of Michigan*, 1897, no. 170, 215-216. Saloons had long been bastions of masculinity. They had served as public places where men gathered to debate politics, vote, decide guilt or innocence, and at one time, foment rebellion. Women had been excluded from participating in the pleasures of these public spaces. The state had allowed women to work in saloons though. This changed in 1897 when Michigan prohibited women from working in saloons.

[33] *Public Acts of Michigan*, 1885, no. 39, 37-38. An act to regulate the employment of children, young persons, and women. This act prohibited children under ten from working in factories and required that children under the age of 14 must have had some formal schooling. It also declared a ten-hour day for women. In P.A. 39, all persons under the age of 18 and all women were prohibited from working more than ten hours a day/sixty hours a week. Additionally, all persons under 18 and all women were required to be provided with an hour for lunch.

government.[34] In 1883, when the legislature created the Bureau of Labor, Michigan heightened its efforts to investigate the working conditions of its laborers. Of immediate importance was child labor. Since Michigan was a leader in educational reform, the first labor law regarding child labor also involved education. From the early nineteenth century, Michiganians had emphasized the merits of education.[35] The first substantial child labor law involved compulsory education of children; the act forbade children from working unless they had four months of schooling in the year previous to their working year.[36] In 1891, the legislature ordered that no child under 14 could be employed without schooling.[37] The merit of these laws and necessity for them cannot be denied; more important to this study is the effect of these laws on fathers. Child labor laws took an aspect of parenting away from the father and placed it in the hands of the state. Fathers could not make decisions regarding the schooling of their children or when they

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[34] Creation of state bureaus of labor and ending child and convict labor were part of the Knights of Labor 1884 legislative platform. Maurice Ramsey, "The Knights of Labor in Michigan, 1878-1888" (M.A. thesis, Colleges of the City of Detroit, 1932), 31-32.

[35] Michigan's first constitution devoted a body of law to education; article ten of the 1835 Constitution created a superintendant of public education, perpetual funds for support of schools, a common school system with minimum terms, libraries, and a university fund. Michigan's legislature continued to enhance its educational system through laws that provided for a university system, teacher education, secondary schools, a woman's department, and agricultural schooling. Furthermore, John Pierce, Michigan's first superintendant, published his *Journal of Education* almost a year before Horace Mann published one in Massachusetts. In 1874, Justice Cooley affirmed the use of tax funds to support secondary schooling; his ruling laid the foundation for tax-supported high schools across the nation. *Stuart v. School District No. 1 of Village of Kalamazoo*, 30 Mich. 69 (1878).

[36] *Public Acts of Michigan*, 1883, no. 144, 149-150. "No child, under the age of fourteen years, shall be employed by an person, company, or corporation, to labor in any business, unless such child shall have attended some public or private day school, where instruction was given by a teacher qualified to instruct…at least four months of the twelve months next preceding the month in which such child shall be employed." A certificate from the director of the school district was required for the child to engage in employment. Additionally, the law required that out-of-work children should be required to attend school.

[37] *Public Acts of Michigan*, 1891, no. 116, 135-136.

entered the workforce. In this way, child labor laws eclipsed men's patriarchal privileges. Additionally, custody cases required judicial intervention. As judges asserted their role to decide "the best interest of the child," they eroded the traditional right of the father to have custody of his children. Judicial patriarchy thereby weakened man's control over the family.[38]

Legislation for women often accompanied labor laws for children.[39] In 1885, Michigan's ten-hour act for women and children prohibited children under ten from working in factories, required that children under fourteen have some schooling, and restricted hours of labor for all persons under 18 and for all women to ten hours a day/sixty hours per week.[40] Unlike men, women and children were not given the option to contract their labor for longer hours. Boys could work at younger ages, because work was expected of their sex. Boys could also clean machinery in motion, work in factories, and labor for longer hours at younger ages than girls. Male children thus gained valuable experience earlier in life, which contributed to higher wages as adults.[41] By 1905, the state barred women from operating wheels or belts.[42]

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[38] See Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth Century America* (Chapel Hill: University of North Carolina Press, 1985). Grossberg explains that child labor laws undercut men's status as head of household. As judges asserted their roles as sole authority in custody disputes, they eroded the traditional right of a father to have legal control over his children. He terms this new role "judicial patriarchy." See also, Peter Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth Century South* (Chapel Hill: University of North Carolina Press, 1995).

[39] *Public Acts of Michigan*, 1889, no. 265, 398-399. In 1889, the legislature raised the minimum age for factory employment from ten to twelve and prohibited children under fourteen from cleaning machinery while in motion. The legislature would later enact laws to safeguard machinery for working men.

[40] *Public Acts of Michigan*, 1885, no. 39, 37-38.

[41] *Public Acts of Michigan*, 1893, no. 126, 210-217. This act raised the age for cleaning machinery in motion to eighteen for males and twenty-one for females. *Public Acts of Michigan*, 1887, no. 152, 164. This act limited hours of labor for boys under 14 and girls under 16 years of age to nine hours a day in all occupations except agriculture, domestic services, and store clerking.

Numerous laws to protect morality underscored gender difference. By 1907, no children under 18 or women were allowed employment in places "where life or limb was endangered, health injured, or morals depraved"; men over the age of 18 were presumably able to fend off such threats.[43] Women could not be employed in houses of ill-fame under the age of seventeen, for instance whereas the age for boys was fifteen.[44] By the time that Michigan declared a nine-hour workday for women, there existed a long tradition of legislating work and social rules separately for women and men.

American men had always governed women; state legislative protection was a natural extension of patriarchy. As Commissioner of Labor, Henry Robinson reported a need "to give to the world the true condition of our sisters who toil for a livelihood."[45] Since "woman's work [was] a constantly increasing factor in the industrial problem, "a full story of workers could not be told without recording women's "struggles as told from their own lips."[46] Belief in the inherent differences of men and women underscored their reports. In order to get women's worker's stories, Bureau of Labor agents canvassed factories where women worked.[47]

Bureau agents investigated different issues for women than for men. When Bureau agents investigated hours of work for men, they separated men's hours of work by industry;

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[42] *Public Acts of Michigan*, 1905, no. 172, 240.

[43] *Public Acts of Michigan*, 1907, no. 169, 225-225.

[44] *Public Acts of Michigan*, 1885, no. 209, 286. This law prohibited the employment of women under 17 in houses of ill-fame. *Public Acts of Michigan*, 1897, no. 95, 104-105. This act prohibited depraving the morals of boys under the age of 15.

[45] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1892, x. It is interesting that Robinson was also a labor organizer.

[46] Ibid., vix.

[47] Except for a limited canvass in 1884, the first year that the Bureau investigated women's work was 1891, which they printed in their 1892 report. Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1892.

when they looked at hours of labor for women, they did not differentiate women by industry. Separating men by industry shows that the state thought of male workers as independent and distinctive, whereas women were dependent and interchangeable. In questionnaires sent to men in 1891, Bureau agents inquired about the type of work completed, worker ethnicity and nativity, families, homes, savings, insurance, and questions relating to "middle-class values" while asking no questions about hours of labor.[48] The next year, Bureau inspectors canvassed women workers; the questionnaires were much more extensive and invasive than those for men. Inspectors asked 129 questions, fourteen about hours of labor.[49] They asked women if their work required stooping or standing. Showing concern for women's health, they asked women if they wore corsets. Bureau inspectors noted that women who reported not wearing them had better health.[50] Although women repeatedly told inspectors that they needed to work, labor commissioner Henry Robinson recommended decreasing women's working days and was opposed to anything but light work for women.[51]

Henry Robinson recommended that law makers enact laws making women's work conducive to good health.[52] He added that "women [were] employed at labor that only necessity should compel men to perform."[53] Some work was too difficult for anyone to perform, but if someone had to do it, it should be a rugged man. Robinson implied that one of the answers to

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[48] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1891, 1-189.

[49] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1892, 1-188.

[50] Bureau representatives did not give similar care to investigating men's clothing or health.

[51] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1892, vi-xvii.

[52] It was expected that men would foment their own legislation, but women were encouraged to ask their representatives. Although women were politically disenfranchised, they still could have sought laws the same way that men did, through trade unions and protest.

[53] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1892, x.

the labor problem was to employ fewer women. Although Bureau records indicate that women earned fifty percent less than men, labor investigators supported shorter working days.[54] Inspectors ignored women's complaints of inadequate wages and pay inequity, although women reported, "it takes all I can earn to live."[55] By 1898, labor commissioner Joseph Cox took a firm stance towards a shorter working day for women and children. Commissioner Cox did not recommend one for men even though he noted that there was an eight-hour movement afoot.[56]

By 1893, Michigan lawmakers expanded protection for workers by empowering factory inspectors with supervisory powers, putting hand rails on stairways, ordering rubber tread for stairs, requiring exhaust fans, and regulating elevator safety.[57] The 1893 factory inspection act also included some "protections" for women that seemed to protect modesty. The law required that stairs be screened and that women receive separate washrooms and closets. The requirement of stair screening did not enhance safety, but it helped protect women from male lechery. Safety laws that treated women differently led to more restrictive labor legislation, such as the 1909 nine-hour law for women and children.[58]

Restrictive hours laws for women workers protected them in a society where they had little political voice or power. The negative aspect of the nine-hour law was that it protected women workers out of a livelihood.[59] These laws also retained the masculine character of wage work. This type of labor legislation belied the reality that, for many working women, long hours

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[54] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1892, 1-188.

[55] Ibid.

[56] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1898, 8.

[57] *Public Acts of Michigan*, 1893, no. 126, 210-217.

[58] *Public Acts of Michigan*, 1909, no. 285, 643-656.

[59] *Public Acts of Michigan*, 1909, no. 285, 643-656.

of labor were necessary to make a living. A Michigan factory inspector of women's work, Agnes Inglis, noted that economic need caused many women to break the nine-hour law. Women workers questioned Inglis as to why they were not paid equal wages for equal work, especially since they had to pay the same rent and other prices as men. A woman factory worker stated, "If I work noons I can make $1.80 a day. That is, if I get there early in the morning, too, at 6:00 or 6:30 o'clock. I work a half hour overtime at noon anyway."[60] "Yes, I worked half an hour extra at noon all last week," stated another woman, "I need the money. Everything is so expensive."[61] Women simply could not compete with men.

Although reformers erroneously assumed that many women worked to purchase frivolous goods, most working women used their wages to support their families or contribute to the family income. A woman reported to the Bureau of Labor that "myself and husband and children are all supported by husband and self."[62] By legislating for women and children differently than for men, lawmakers curtailed women's earning capacity. They sanctioned men as primary earners with women playing a supporting role. Social-scientific beliefs of women's inferiority perpetuated social views of men as breadwinners.[63]

By 1909, when Michigan legislators enacted a nine-hour day for women and children, women's factory work was not extraordinary, nor was legislating their work. "Women are in the

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[60] "Quotes from Women," 1914, box 30, Agnes Inglis Papers, Labadie Collection, University of Michigan.

[61] Ibid.

[62] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1892, 171.

[63] In *Muller v. Oregon*, 208 U.S. 416 (1908), Justice Brewer stated "history discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength…she has been looked upon in the courts as needed especial care that her rights may be preserved."

industrial world to stay," a female inspector for the Bureau of Labor noted, "woman's sphere is constantly broadening. They can even be found working in foundries, where they have demonstrated that they can compete with men."[64] Gender-based, protective labor legislation created an earning structure that privileged men as earners of family income. After revisions to Michigan's Constitution, the state could "enact law relative to the hours and conditions under which men, women, and children may be employed."[65] Legislators restricted the hours of labor for children under eighteen and women to nine hours a day or fifty-four hours a week. Additionally, girls under the age of eighteen could not work from 6:00 p.m. to 6:00 a.m. The law excluded women who worked in the canning industry.[66]

Seventy-five female workers from International Seal and Lock company of Barry county were outraged over the nine-hour law. They feared that reduction of hours would mean their financial demise. Hattie Withey, Bernice Bennett, Etta Bennett, Frances Hart, and Helen Knapp, along with Aben Johnson, their assistant general manager, lodged a complaint against Isaac Bloem, deputy factory inspector, and Richard Fletcher, Commissioner of Labor, to stop the men from enforcing the nine-hour law. The resulting case, *Withey v. Bloem* (1910), exemplified the strain that women felt working under strict state control.[67] Women wanted freedom to work the same hours as men. Since women received less money for the same work, shorter workdays diminished their capability to support their families. Working women were not passive actors in

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[64] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1907, 9.

[65] Michigan Constitution, 1908, art. five, sec. twenty-nine. The 1908 Constitution was made effective January 1, 1909.

[66] *Public Acts of Michigan*, 1909, no. 285, 643-656. Public Act 285 went into effect on June 2, 1909.

[67] *Withey v. Bloem*, 163 Mich. 419 (1910).

the fight for workplace justice. [68] They had agitated for change through boycotting and striking. A female laborer bragged, "I am strong, I can work fourteen hours a day, and I never asked for help."[69] This woman did not want state protection. Another woman told labor inspector, Agnes Inglis, that she needed to work, "I receive help from my husband and we have a large family to support."[70]

International Seal and Lock provided a fairly safe working environment. The company manufactured car seals; making seals was easy, if tedious, work. In accordance with the law, the factory provided the women with seats and secured the machinery to protect employees as best as possible. Working women used fairly-safe, electric-powered machinery; no woman had ever been injured using it. The factory met all code requirements. The machinery used in the factory did not put employees in the vicinity of belts, pulleys, or shaftings, so they were not put in danger of getting hair, clothing, or body parts tangled up in the machinery. A one-story building on high ground housed the factory, so there was little chance of flooding; moreover, the workers had adequate methods of egress in case of fire. The factory was well-lit with windows on all sides and had proper heat and ventilation. The machinery did not emit dust, vapors, or noxious fumes.[71] All employees were provided with warm lunches in a designated lunch room at the

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[68] Women combined together in woman-centered unions or participated (when encouraged) in male-dominated unions. Women also were more apt to use boycotting as a tool of protest. For female unionism, see Alice Kessler-Harris, *Out to Work: A History of Wage-Earning Women* (New York: Oxford University Press, 1982); Dorothy Sue Cobble, *Dishing It Out: Waitresses and Their Unions in the Twentieth Century* (Urbana: University of Illinois Press, 1991); and Ruth Milkman, ed. *Women, Work, and Protest: A Century of Women's Labor History* (Boston: Routledge and Kegan Paul, 1985).

[69] "Working Women's Bitter Cry," *Labor Leaf*, December 23, 1886.

[70] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1892, 171-172.

[71] Bill of Complaint, *Withey v. Bloem*, Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1910).

noon hour. The company provided women with a place to store their coats and clean washrooms. In all, the factory was a decent place for Harriet Withey and her colleagues to work; they attested that there was no danger to their lives or limbs.[72]

The owners of International Seal feared that the nine-hour law would severely injure their company.[73] Due to contractual obligations, the company was compelled to produce a minimum number of seals. Many of their customers were railroads companies, the federal government ordered at least 12 million seals per year. They would have to employ more women to get the same amount of seals produced or hire men. Since men commanded twice the wages as women, hiring men would be a more expensive enterprise. Owners stated that the loss of one hour per day would destroy their business. Company owners joined the suit, then, because of avarice, not generosity towards women. They took issue with a section of the law that made employers guilty of a misdemeanor punishable by fine and/or imprisonment if they allowed women to work over nine hours a day. International Seal and Lock found objectionable the fact that owners and not workers assumed responsibility for violating the law.[74]

The women employees of International Seal and Lock also worried about financial ruin. The company paid most of the women per seal; some were paid hourly. Regardless of the manner of pay, shorter hours meant less money. Women worked for ten hours a day, five days a week, with an hour off for lunch each day. On Saturdays, the women worked a little over eight hours with an hour for lunch. They argued that since they did not make enough money to

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[72] Bill of Complaint, *Withey v. Bloem*, Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1910).

[73] Ibid.

[74] Ibid.

support themselves on ten hours a day, nine hours a day would mean devastation. If the court supported hours restriction, they feared losing their jobs to men who could work unrestricted hours.[75] If the company did not hire men and instead kept women working, the women worried that their pay would be reduced in order for the company to remain profitable. Hattie Withey, Bernice Bennett, Etta Bennett, Frances Hart, and Helen Knapp stated that they would "suffer great loss and damage, that their earnings [would] be reduced, and their ability to earn a livelihood for themselves materially impaired. That the amount of their earnings at the present time [was] barely enough to sustain themselves and their families which certain of them support, and a reduction of ten per cent thereof which would be caused by the enforcement of said section would cause them irreparable injury."[76]

The circuit court judge of Barry county affirmed the women's complaint; the court granted the women an injunction against Isaac Bloem and Richard Fletcher with a penalty of $10,000 if they enforced the law.[77] Clement Smith presided over the circuit court on March 8, 1910. Smith opined, "I can see no reason why the employers of labor engaged in preserving perishable goods in fruit and vegetable canning establishments should not be governed by the same restrictions as it is claimed govern the complainant…there can be no reason for this

[75] The women were correct to fear this outcome. After the U.S. Supreme Court validated Oregon's hours law for women in the *Muller* case, Curt Muller fired his women workers and hired Chinese men to take their places.

[76] Bill of Complaint, *Withey v. Bloem*, Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1910).

[77] *Withey v. Bloem*, Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1910).

distinction."[78] Applying Justice Thomas Cooley's theory on police powers, Judge Smith could not find rationale for this type of class legislation.[79] "If the act is based upon the police power of the state, and in the interest of the health and general welfare of the employes [*sic*]," Smith asserted, "it needs no proof to show any person with ordinary knowledge and observation that complainants' factory and the work of its employes [*sic*], is to say the least, not inferior to a canning factory in its surroundings and general welfare of its employes [*sic*]."[80] Smith's opinion of hours clearly showed that he favored protective labor legislation for women. As he wrote, "It is equally troublesome to discover why women engaged in [canning] should have no restrictions in the sale of their hours of labor per day."[81] Clement Smith granted an injunction to stop Bureau of Labor agents from enforcing the law, because he felt that the women's constitutional rights had been abridged, not because he disapproved of state control over women's work.

Isaac Bloem and Richard Fletcher, acting on behalf of the state government, appealed to the Supreme Court of Michigan.[82] When the case went before the Michigan Supreme Court, the women and their attorney, Hal Smith, put forth an impressive brief. Smith's main arguments were that the law was class legislation, it deprived women of their property rights, and it was not a health law, therefore, it was not a proper exercise of the police power. Smith stated that unless all women who labored for more than nine hours were treated as an endangered class than the

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[78] *Withey v. Bloem*, Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1910).

[79] Thomas Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union*, (Boston: Little, Brown, and Co., 1868).

[80] *Withey v. Bloem*, 163 Mich. 419 (1910).

[81] Ibid.

[82] Ibid.

law should not stand. Women who worked in canning factories were excluded from the act. The court maintained that, "the legislature may also deem it desirable to prescribe peculiar rules for the several occupations, and to establish distinctions in the rights, obligations, duties, and capacities of citizens."[83] Smith argued that the law was unconstitutional as it violated women's 14th federal amendment right to due process.[84] Smith argued that laws dictating labor regulations for women must be based on the same legal and judicial principles as those for men.[85] Since the law did not purport to protect the health of women, it was an unnecessary limitation on women's liberty. Citing *Lochner,* Smith stated that "there must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty."[86] Smith wanted to protect workers, but recognized that too much protection could be

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[83] Thomas Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union*, (Boston: Little, Brown, and Co., 1868), 554. Pointing to similar validated statutes, the justices ruled that the law was not class legislation and was not arbitrary. *Spurr v. Travis*, 145 Mich. 721 (1906); *Mt. Vernon-Woodberry Cotton Duct Co. v. Insurance Co.*, 111 Md. 561 (1909) which was more similar to PA 285 in that it regarded employing children under 12 years of age except in canneries and it was not ruled as class legislation.

[84] Smith asserted that the nine-hour law was not a reasonable exercise of the police power. *People v. Smith,* 108 Mich. 427 (1896). The case involved the constitutionality of the emery/blower law. The court held that the state could prescribe reasonable regulations for the protection of employees.

[85] In *Holden v. Hardy* (1898), mining was considered a dangerous industry while in *Lochner v. New York* (1905), baking was not. Smith maintained that hours of work for women should not be limited when the work was not dangerous. A ten-hour day was reasonable, because it applied to men as well. The Michigan judiciary had set a precedent in *Bartlett v. Street Railway* (1890) that only dangerous work for men was to receive unconditional workday restrictions. By removing the element danger, Michigan justices confirmed state control over women's work. Two cases where the court struck down eight-days for women were: *Ritchie v. People*, 155 Ill. 98 (1895) and *Burcher v. People*, 41 Colo. 495 (1907). *Holden v. Hardy*, 169 U.S. 366 (1898); *Lochner v. New York*, 198 U.S. 45 (1905); *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890)

[86] *Lochner v. New York*, 198 U.S. 45 (1905).

detrimental. As he stated, "even the honest reformer with the laudable desire to benefit womenkind may do more harm than good by too great a restriction on a healthful occupation."[87]

The *Withey* complainants did not contest all protective labor legislation; rather, they opposed gender discrimination. The plaintiffs believed that labor legislation was necessary to make safe and sanitary working establishments, "but wholesale legislation which curtails the earnings of labor unless clearly defensible as a health measure should not, in our opinion, be sustained."[88] Although the state claimed that this was a health regulation, the law itself did not bear the hallmarks of health legislation. If working in a seal factory was unhealthy for women after nine hours a day, then working in a canning factory for longer than nine hours a day was debilitating too. The state claimed that restricting work in canneries was unfeasible because the growing season was limited.[89] The state did not want to disadvantage growers, so they did not limit women's work in canneries. The exemption of canneries proved that issues of health did not form the basis for the nine-hour law, regulation of women's work did.[90]

The Michigan Supreme Court set in motion a precedent for discrimination against women workers that lasted for most of the twentieth century when they validated the nine-hour law for women.[91] The ability to freely labor was a right for men, but a privilege for women. Because

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[87] *Withey v. Bloem*, 163 Mich. 419 (1910).

[88] Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1910).

[89] Claim of Appeal, *Withey v. Bloem*, Michigan, *Reports and Briefs of the Michigan Supreme Court* (Grand Rapids: American Brief and Record Company, 1910).

[90] Perhaps lawmakers excluded cannery work from the statute, because it was part-time work and therefore appropriate work for women to be doing.

[91] In 1948, women bartenders appealed to the U.S. Supreme Court to overturn an act that prohibited female bartending in cities with a population of over 50,000 unless a male family member was present. In *Goesaert v. Cleary*, female bartenders contended that to deny only some

women could not contract their labor freely, the judges rationalized that women needed protection more than men—though this was a legislative or judicially imposed handicap. Since "woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence," the state limited women's hours of labor.[92] The judiciary had narrowly defined state police powers when interfering with men's right to contract, but did not apply the same scrutiny to laws abridging women's freedom. The Court held that the "general right to contract in relation to one's business is part of the liberty of the individual, protected by the 14th amendment," but that the state could restrict many aspects of that power to contract.[93] Through the *Withey* decision, the Michigan judiciary entrenched woman's status as mother and as ward of the state.

State control over women's work did not stop workers from attempting to better their working conditions.[94] Although dealt a legislative and judicial blow, women workers continued their fight for worker rights. As men did, women struck for better wages and better working conditions. Unlike men though, women had to prove that their work was a right and not a privilege. They refused to acquiesce to poor treatment so women unionized to better their treatment as workers.

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women the privilege of bartending employment was class legislation. The Michigan Eastern District Court and the U.S. Supreme Court found similarly as the *Withey* case—denying work to specific groups of women was not class legislation. Similarly, the U.S. Supreme Court found in the *Goesaert* case that the women were not denied their rights under the 14th amendment just as the Michigan Supreme Court had in *Withey*. *Goesaert v. Cleary*, 335 U.S. 464 (1948). The *Goesaert* precedent was not reversed until 1976 in *Craig v. Boren* 429 U.S. 190 (1976).

[92] *Muller v. Oregon*, 208 U.S. 416 (1908).

[93] *Withey v. Bloem*, 163 Mich. 419 (1910).

[94] Male workers were still fighting to control industrial relations. State control over women had no effect on men's fight for control.

In the 1910s, the International Ladies Garment Workers' Union was one of the most powerful Michigan unions for women. Michigan women led a large strike at the Kalamazoo Corset Company.[95] Women walked out in 1911, but returned to work after management promised them that working conditions would be better. After the laborers experienced no workplace improvement, they walked out again a year later; this time the strikers had the support of the International Ladies' Garment Workers Union. The strike was primarily over wages, as Josephine Casey (an ILGWU) organizer stated: "the pure object in organizing the girls of Kalamazoo [was] to insure for them a living wage."[96] The women, however, attempted to negotiate a settlement for men and women. They proposed to raise the weekly minimum wage for women and men (although men would still make more), same hours for men as for women, double rates for overtime, and the option to refuse overtime on Saturdays. The strikers were not successful. The president of Kalamazoo Corset Company, James Hatfield, refused to negotiate and fired twelve union members. Hatfield offered to address a few issues raised by the strikers, namely, sanitary facilities and sexual harassment (issues of female morality). Management would not recognize the International Ladies' Garment Workers Union, raise wages, or reduce the hours of labor for men. After over six months of striking, the strikers accepted the previous status quo; even so, most strikers were not allowed to return to work.[97] The strike represented

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[95] For a descriptive analysis of the 1912 strike, see Barbara Havira, "Dwindling Into Failure: the International Ladies Garment Workers' Union Strike in Kalamazoo, 1912," *Michigan Academician* 20 (Winter 1988), 257-273.

[96] Josephine Casey, "Letter from Prison" *The Detroit Times*, May 4, 1912, reprinted in Stein, "Contempt of Court or Contempt for a Vicious System?" *The Ladies Garment Worker*, 3 (June 1912), 129-131.

[97] Havira, "Dwindling Into Failure: the International Ladies Garment Workers' Union Strike in Kalamazoo, 1912," 257-273.

women's attempt to be seen as regular workers capable of negotiating for both sexes. By only changing conditions that involved sanitation and sexual harassment, the Kalamazoo Corset company addressed only "womanly" issues, not those common to workers as a whole.

The strike revealed a serious problem for women workers—pay inequity. Women had traditionally earned about half of what men did. Women were "obliged to accept whatever wages [were] offered."[98] In industrial society, women often performed similar jobs to men and reasoned that they should be accorded equal pay. Unions supported this endeavor, as equal pay for equal work would decrease the chance that employers would employ women as strikebreakers.[99] The American Federation of Labor had warned of pay inequity: "But to prevent an unscrupulous employer from using the less valuable man to bring down the standard of wages, it is often found necessary to establish a minimum wage."[100] Union leaders also worried that women's lower wages would lower the rate of wages for entire industries. Ida Van Etten testified at the 1890 National Convention of the American Federation of Labor: "Their [women's] cheaper labor is a continual menace to wages, and their entrance, in any considerable numbers, into a trade or calling is invariably followed by a lowering in its rate of wages."[101]

Men, too, hoped for a minimum wage. Referring to a minimum wage for men, the Knights of Labor stated that "we cannot see where there is any violation of the liberty of the

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[98] "Working Women's Bitter Cry," *Labor Leaf*, December 23, 1886.

[99] "Among the demands of the Knights of Labor are "equal pay for equal work." *Labor Leaf*, October 6, 1886.

[100] "Equal Pay," *Labor Leaf*, October 6, 1886.

[101] Ida Van Etten, "The Condition of Women Workers Under the Present Industrial System," speech, National Convention of the American Federation of Labor, Detroit, MI, (December 8, 1890).

individual in so doing."[102] Since the judiciary had repeatedly affirmed men's liberty to contract, wage legislation contradicted that freedom.[103] Proponents of minimum wage laws turned to gender as an alternative route. By using worker's sex as an argument, reformers further impeded women from attaining economic equality.[104] With women working fewer hours than men, they increasingly made less money and the wage gap grew. Terrifying reports about the dangers of low wages, immorality, poor health, and reduced capacity for motherhood, caused labor leaders and reformers to surrender fixing pay inequity in order to concentrate on larger low wage issues. Empowered by judicial decisions upholding protective labor legislation for women, Michigan legislators investigated a minimum wage for women.[105]

In 1913, the Michigan legislature created a commission of inquiry relative to minimum wages for female employees.[106] Members of the commission included labor leader Judson Grenell, Charles Beadle, Myron H. Walker, and Luella Burton. Unions did not oppose state protectionism for women, as evidenced by Judson Grenell's chairmanship of the committee. Grenell was a respected labor leader in Michigan. By the time the report came out in 1915, there were approximately 225,000 women working in Michigan. The commission noted that the time was ripe to advance minimum wage legislation for women, because "the power of a State to

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[102] "Equal Pay," *Labor Leaf*, October 6, 1886.

[103] Wage regulation was limited to the states until after the New Deal. See *Stettler v. O'Hara*, 69 Ore. 519 (1914). In 1923, the Supreme Court of the United States struck down federal minimum wage legislation for women in *Adkins v. Children's Hospital*, 261 U.S. 525 (1923).

[104] Vivien Hart notes that Americans focused on gender when arguing for minimum wage as opposed to the British who argued based on class. Vivien Hart, *Bound by our Constitution: Women, Workers, and the Minimum Wage* (Princeton: Princeton University Press, 1994), 50.

[105] *Withey v. Bloem*, 163 Mich. 419 (1910).

[106] *Public Acts of Michigan*, 1913, no. 290, 551-552.

protect its citizens from industrial maladjustments is continually being broadened by judicial decisions."[107] The commission expressed concern that "the girl who works in a factory is placed by society on a lower plane than the one who is "helping mother."[108] Perhaps the commission hoped that if society acknowledged the legitimacy of female factory workers, they would hold factory workers overall in higher esteem.

Although the commission advocated minimum wages for women, it did not emphatically support married women in the workforce. Throughout the report, commission members referred to a "bad judgment in contracting a marriage" as rationale for married women working.[109] In a way, they likened the marriage contract to a labor contract, marriage was just another economic enterprise.[110] They assumed that women lived with parents while single and left work upon marriage. This thought process kept family support as part of the male bastion. Upon advice from the commission, Michigan legislators enacted a law to "prohibit sex discrimination in the payment of wages."[111] The Equal Pay Act provided that no females be given work disproportionate to their strength or employed in a place detrimental to her health, morals, or potential capacity for motherhood. Reformers exalted the law for its health and social merits. In the New-Deal era of the 1930s, the court affirmed minimum wage laws for women in *West Coast*

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[107] The broadening of protection was especially true for women and children. Michigan, "Report of the Michigan State Commission of Inquiry into the Wages and the Conditions of Labor for Women and the Advisability of Establishing a Minimum Wage," (Lansing, MI: State Printers, 1915).

[108] Ibid.

[109] Ibid.

[110] The strength and permanence of the marriage contract was enhanced by the fact that marriage dissolution was a judicial matter.

[111] *Public Acts of Michigan*, 1919, no. 239, 427-428.

Hotel Co. v. Parrish (1937).[112] This landmark decision strengthened federal oversight of laborers[113]

State administered protectionism for women and children advanced men as breadwinners. Although breadwinning had historically been the role of man, the industrial revolution provided an opportunity for change. The *Ladies Home Journal* ran a series of articles from 1889-1892 about women as breadwinners, which supported the idea that women hoped that the new industrial America would not leave them behind. Women wage earners desired to compete equitably with men.[114] The role did not change; law and society viewed men as primary wage earners. Working-class men found that state protection of women and children affected their autonomy too. As Michael Willrich states, "Although it utterly misrepresented the economic relations of working-class home life, the breadwinner norm empowered private charities, state agencies, and local courts to police the behavior of workingmen, holding them liable, to their wives and the state for family poverty in industrial America."[115] Prohibiting desertion or

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[112] *West Coast Hotel v. Parrish,* 300 U.S. 379 (1937).

[113] The Wagner Act of 1935 and Fair Labor Standards Act of 1938 reinforced federal control over work relations. Julie Novkov argues the Fair Labor Standards Act was not a repudiation of former cases but the culmination thereof to create a modern welfare state. She states that, "much of the doctrinal framework for the modern interventionist state arose through battles over female workers' proper relationship with the state." Julie Novkov, *Constituting Workers, Protecting Women* (Ann Arbor: University of Michigan Press, 2001), 13.

[114] *Ladies Home Journal*, series titled "Women's Chances as Breadwinners," 1891-1892.

[115] Michael Willrich, *City of Courts: Socializing Justice in Progressive era Chicago* (New York: Cambridge University Press, 2003), 463.

abandonment of wives or children forced men to economically support their families.[116] In this way, the state used protectionism to preserve gender roles at a time when a new industrial society could have encouraged their reconstruction.

Michigan's protective structure greatly affected workers. Protectionism for women reinforced proper work spaces for men and women; it legitimized the idea that a reasonable police power existed to rein in women's labor. Judicial decisions held women workers to be inferior to male laborers. As a whole, workers lost a powerful opportunity to unite together for working rights. Laws that feminized protective labor legislation placed any protection-seeking man on the outskirts of male society. By the 1910s, union men fought less for protective labor legislation than to control industrial relations by gaining employer recognition of unions. Union men then encouraged the state to assert its power over women.

[116] *Public Acts of Michigan*, 1903, no. 39, 46-47.

Conclusion

Worker Control over Industrial Relations Denied

Industrialization revolutionized American society. As society changed, capital and labor engaged in a power struggle. Michigan unionists and reformers fought for laws that would protect them against workplace abuse and allow them to claim control over their working conditions, while employers battled to retain their authority. Unionized men often waged battles in the courts, the halls of state legislatures, the newspapers, and on the streets. The outcome was disheartening: lumbermen, rail workers, miners, and factory men fought for control over industrial relations, were emasculated, and ultimately lost their bid for power. Labor activists in Michigan pursued protective labor legislation, particularly through collective action, in order to secure a jeopardized personal and professional independence. Governments and reformers meanwhile imposed protection on women in order to ensure their subordination to paternal 'others'—the state, husbands, employers, and fathers. A good many women objected, and men's campaigns were partly successful. But in the end, state paternalism (especially judicial paternalism) was the real winner.

Michigan workers realized that if they were going to be able to earn a fair wage with decent working conditions, they would need to change the industrial game. A capital-friendly judiciary and legislature defended inequality between workers and employers. Instead of working within a legal system that favored capital, labor activists tried to refashion the system itself through collective action. Working men sometimes claimed labor legislation as their privilege; they assumed authority over industrial rules and regulations. Laws that mandated hours of labor, payment of wages, workplace safety, union recognition, and employer liability gave working men legal rights. Many laborers found that uniting together in male-centered

organizations afforded them more strength than individually bargaining with employers or petitioning the courts to determine contract fairness.

Judicial decisions about protectionism for working men and anti-union legislation kept workers from controlling management/labor relations. In the mid-1800s, Michigan legislators crafted laws that restricted union activity.[1] When Michigan unionists were able to shape legislation that was union-friendly, the judiciary thwarted union strength by granting industrialists labor injunctions.[2] Michigan judges did not attempt to favor capital over labor; they did not sit around thinking of ways to stop workers from gaining power. Instead, the courts made decisions that advanced commerce, preserved property rights, and maintained common law doctrine regarding employer/employee relations. Through issuance of labor injunctions and rulings over protective laws for men, Michigan's judges asserted themselves as the authority over workplace relations. Conservative courts saw no more reason for unions to govern the workplace than for legislators to control matters between employers and employees.[3]

Through judicial readings of protective labor legislation, Michigan judges also characterized manhood. In the late nineteenth and early twentieth century, a working man's identity depended on his ability to negotiate the terms of his labor, which varied by type of employment, demand for labor, skill, and other variables.[4] Through decisions over maximum

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[1] *Public Acts Michigan*, 1867, no. 163; *Public Acts Michigan* 1877, no. 11.

[2] Michigan legislators repealed the conspiracy act with Public Act 41 of 1891. *Public Acts of Michigan*, 1891, no. 41, 39-40.

[3] Ruth O'Brien, "Business Unionism versus Responsible Unionism: Common Law Confusion, the American State, and the Formation of Pre-New Deal Labor Policy" *Law and Social Inquiry*, 18 (Spring 1993), 255-296.

[4] In *Edwards v. McEnhill*, 51 Mich. 160 (1883) the Court ruled that married women have no general capacity to make contracts, their common law disabilities being only partially removed

workdays for men, judges asserted that men were independent, that they owned themselves.[5] By validating hours restriction for women on the grounds that women could not negotiate their terms of labor, the court implied that men could.[6] Michigan judges determined that masculinity for white workers included breadwinning, liberty to contract, self-ownership, hard work, respect for the rights of fellow man, disciplined actions, and independence to choose a vocation and negotiate conditions of labor. Policy makers, union leaders, and society all reinforced breadwinning as an important aspect of masculinity. In an 1898 annual report from Michigan's Bureau of Labor, for example, the labor commissioner stated that "it [was] only right and just that the laborer should consider his interests and unite for protection and to preserve a fair and living wage."[7] In 1903, Michigan legislators made man the legal breadwinner when they enacted a law to prevent the desertion and abandonment of wives and children, not supporting one's family was a felony.[8] Men now had grounds upon which to bargain for better wages.

Working men had fought to control the wage system and had succeeded at least in part. In the 1880s, the Knights of Labor persuaded the Michigan legislature to pass workmen's lien laws that required payment to workers first before other creditors were paid. In 1897, the

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by the Married Woman's Act, thus, enthroning man as capable to make contracts. In *Kuhn v. Common Council of Detroit*, 70 Mich. 534 (1888), the Michigan Supreme Court ruled that the right to contract a debt or other personal obligation is included in the right to liberty. For liberty to contract in Michigan, see *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890) and *Schurr v. Savigny*, 85 Mich. 144 (1891).

[5] *Webber v. Barry*, 66 Mich. 127, (1887) shows that men own themselves and their actions.

[6] *Withey v. Bloem*, 163 Mich. 419 (1910).

[7] Michigan, Bureau of Labor and Industrial Statistics, *Annual Report*, 1898, 7.

[8] *Public Acts of Michigan*, 1903, no. 39, 46-47.

Michigan legislature prohibited employers from paying workers in anything other than lawful money.[9] Judicial decisions in numerous cases also reinforced men as breadwinners.[10]

As unionists and employers battled over workplace control, many workers ramped up their striking, boycotting, and picketing efforts. They also protested directly to employers and negotiated with management to forward their cause. But the courts intervened. Throughout the early twentieth century, Michigan judges enjoined laborers from striking, picketing, and boycotting. Judicial decisions regarding union strikes diminished union strength and emasculated unionists. By the early 1900s, the state and most capitalists controlled work relations. Unions turned away from crafting protective labor legislation knowing that they would not be able to control the state. Instead, they focused on making work seem as manly as possible. This included affirmation of women workers as a separate, dependent class.

Despite anti-union forces, unionists continued to fight for the rights of labor. Although the Clayton Anti-Trust Act of 1914 exempted unions from anti-trust activities, the Michigan judiciary did not stop using labor injunctions.[11] Judicial attacks on labor caused unions to direct their energy and attention toward state anti-injunction laws. In 1914, for example, the Michigan Supreme Court affirmed an Ingham County Circuit Court decision that enjoined members of the International Molders' Union no. 255 from picketing.[12] The decision enraged Detroit Federation

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[9] *Public Acts of Michigan*, 1897, no. 221, 278-279.

[10] In *Benson v. Morgan*, 50 Mich. 77 (1883) , the Michigan Supreme Court ruled that a wife could sue for, recover, and keep her earnings with her husband's consent, thereby making the husband the primary overseer of family wages. In *Bolt v. Friederick*, 56 Mich. 20 (1885), the Court holds that an employee is entitled to his wages. Other cases allude to male headship: *Bartlett v. Street Railway of Grand Rapids*, 82 Mich. 658 (1890); *Withey v. Bloem*, 163 Mich. 419 (1910); *Jendrus v. Detroit Steel Products Company*, 178 Mich. 265 (1913).

[11] Clayton Anti-Trust Act, 15 U.S.C.A. § 12 et seq. 1914.

[12] *In re Langell*, 178 Mich. 305 (1914).

of Labor members. As Jake Hall asserts, "labor leaders referred to the *Langell* decision when they wanted to show an example of the extent to which the courts were corrupt."[13]

From 1915-1921, Detroit Federation of Labor unionists led workers in a series of anti-injunction campaigns. Labor leader and attorney, Maurice Sugar, directed an initiative to amend the state's constitution to outlaw labor injunctions. When enough signatures were secured to place the initiative on the ballot, legislators let the bill die in committee. Although legislative attempts were unsuccessful, by ignoring labor injunctions the DFL continued to fight employers. Jake Hall argues that Michigan workers' anti-injunction campaign changed the way that circuit court judges issued injunctions. His study of labor injunctions shows that the DFL refusal to comply with court orders seemed to have reined in judicial issuance of injunctions.[14]

Whatever success the Detroit Federation of Labor's anti-injunction campaign may have garnered, the United States Supreme Court destroyed workers hopes with the *Duplex Printing Press v. Deering* (1921) decision.[15] A strike had erupted in Battle Creek, Michigan. In support of the striking workers, unions in New York had boycotted a manufacturer's goods. Speaking for the court, Judge Mahlon Pitney ruled that secondary boycotts still were illegal because they had always been so, and that injunctions could be issued against striking workers and their supporters, even if they were in another state and worked for a different company. By doing so, the judiciary gutted the Clayton Act for labor.

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[13] Jake Hall, "Anti-Injunction Campaigns and the Transformation of Labor Law in Detroit, 1915-1921," *Michigan Historical Review* 36 (Spring 2010), 4.

[14] Hall, "Anti-Injunction Campaigns and the Transformation of Labor Law in Detroit," 4.

[15] *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921).

Judicial decisions were not the only threat to union strength. Welfare capitalism also helped undermine union power. It is possible that welfare capitalism was an attempt to enforce industrialist's vision of manhood on workers. Businessmen may have tried to instill in their workers the pride of individual economic gain. Regardless of the rationale, welfare capitalism greatly changed the lives of working men. Male workers' prospects changed when Henry Ford created a five-dollar day. In 1914, Ford announced that unskilled laborers at the Ford plants would make a minimum of $5 per day if they abided by certain conduct regulations. Paying unskilled workers almost twice what they had been paid previously greatly changed workers' view of minimum pay and unions. It also changed the way that society valued unskilled laborers. Over ten thousand men showed up at the Ford plant the day following Ford's announcement.[16]

Higher wages, however, came with a price—lower union participation and greater employer interference in daily life. To receive the privilege of earning a family wage, men had to accept employer intrusions. Employers set up paternalistic programs and organizations for their workers. Corporate managers encouraged workers to attend company picnics, play on company-sponsored sports teams, and enjoy corporate-owned facilities. Mainly, employers set up these programs to deter men from joining unions. Henry Ford, who epitomized the welfare capitalist, encouraged his workers to live a life worthy of a Ford worker.[17] If Ford workers wanted to make the most money possible, they toed the company line. Ford employees could

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[16] "Mob for Jobs: Of 10,000 Crowd Forms at 2 O'Clock in the Morning," *Detroit Free Press*, January 7, 1914.

[17] John Foster, "The Fetish of Fordism," *Monthly Review: An Independent Socialist Magazine* 39 (March 1988), 14-33.

share fully in the profits only if they met the standards of the Ford Sociological Department.[18] Ford's field agents investigated his workers to make sure that they were "sober, saving, industrious, and efficient."[19] Additionally, Henry Ford prohibited ungentlemanly behavior, such as drinking or smoking excessively.[20] Pamphlets encouraged workers to adopt American cultural ideals like speaking English, adopting American hygiene habits, and engaging in American leisure activities.[21] Henry Ford's decision forced other car makers and industrialists to meet his standard.

In the late 1910s, while workers adjusted to welfare capitalism, anti-communist sentiment swept the nation. The Red Scare curbed union power in Michigan. Attorney General Mitchell Palmer and a young J. Edgar Hoover authorized raids to round up people suspected of communist affiliation.[22] The Michigan legislature enacted a law to define and punish criminal syndicalism. Under Michigan's broad definition, labor union members could be rounded up as possible communists. The legislature defined criminal syndicalism as "doctrine which advocates crime, sabotage, violence or other unlawful methods of terrorism as a means of accomplishing

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[18] John Foster, "The Fetish of Fordism," *Monthly Review: An Independent Socialist Magazine* 39 (March 1988), 14-33.

[19] "New Industrial Era is Marked by Ford's Shares to Laborers," *Detroit Free Press*, January 6, 1914.

[20] Foster, "The Fetish of Fordism," 14-33.

[21] "Ford Facts," Georgia Boyer Hobart Collection, Benson Ford Research Center, Dearborn, MI.

[22] For information on the Red Scare, see Frank Raymond, "The Red Scare in Detroit, November 1919 to April 1921" (M.A. thesis, University of Detroit, 1978). Also, see Robert Asher and Charles Stephenson, ed., *Labor Divided: Race and Ethnicity in United States Labor Struggles, 1835-1960* (Albany: State University of New York, 1990).

industrial or political reform."[23] The hysteria peaked in Detroit from 1919-1920 when hundreds of workers, many of them union members, were rounded up as part of the Palmer Raids, jailed, and held without trial. Government targeting of union members frightened many workers.

By the 1920s, union membership waned across the nation. Scholars have offered numerous reasons for the decline of labor movement activity.[24] Yellow-dog contracts prohibited union affiliation. Welfare capitalists offered workers benefits that were too enticing for laborers to risk losing them by unionizing. Corporations repressed striking activity through violence, threats, and intimidation. Many unions did not accept the new body of unskilled workers into their ranks; thus, they overlooked an ever-growing number of workers. Relatively good wages, the anti-radicalism movement of the post-World War I era, lack of working-class solidarity, and a thriving consumer culture also contributed to declining union membership. Employers portrayed union contracts as infringements on American liberties. Some employers required new employees to sign contracts that they would not join a union, more familiarly known as yellow-dog contracts. The United States Supreme Court determined the constitutionality of yellow-dog contracts. In *Adair v. United States* (1908), the judiciary held that a federal law prohibiting

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[23] *Public Acts of Michigan*, 1919, no. 255, 452-453.

[24] See David Brody, *In Labor's Cause: Main Themes on the History of the American Worker* (New York: Oxford University Press, 1993); Irving Bernstein, *The Lean Years: a History of the American Worker, 1920-1933* (Baltimore: Johns Hopkins University Press, 1966); David Brody, *Steelworkers in America: the Non-Union Era* (Cambridge: Harvard University Press, 1960); Melvin Dubofsky, *We Shall Be All: a History of the Industrial Workers of the World* (Urbana: University of Illinois Press, 1988); Gary Gerstle, *Working-Class Americanism: The Politics of Labor in a Textile City, 1914-1960* (New York: Cambridge University Press, 1989); Sidney Lens, *The Labor Wars: From the Molly Maguires to the Sitdowns* (Garden City: Doubleday, 1973); David Montgomery, *The Fall of the House of Labor: the Workplace, the State, and American Labor Activism, 1865-1925* (New York: Cambridge University Press, 1987); Roy Rosenzweig, *Eight Hours for What We Will: Workers and Leisure in an Industrial City, 1870-1920* (New York: Cambridge University Press, 1983); Olivier Zunz, *The Changing Face of Inequality: Urbanization, Industrial Development, and Immigrants in Detroit, 1880-1920* (Chicago: University of Chicago Press, 1983).

yellow-dog contracts deprived workers of personal liberty and property rights.[25] Many states then created laws prohibiting union-restrictive contracts as an exercise of their police power.

Gregory Wood offers another explanation for the "paralysis of the labor movement" in 1920s Detroit. Wood argues that unionists' appeals to manhood, which emphasized the importance of working-class militancy and active union memberships as pillars of masculinity, failed to overcome existing barriers and bring workingmen into the ranks of organized labor."[26] Wood notes that working men had developed a masculinity that did not involve participation in labor unions. Union participation was not the only way for a laborer to be a man: manhood required only self-determination, however it was achieved. The Auto Workers Union and the Detroit Federation of Labor failed to raise union membership by championing the idea that belonging to a union was manly. Men thus pursued any avenue to secure better working conditions and wages. Wage-earning in and of itself was a characteristic of masculinity. If union membership offered men assistance in achieving their goals, they joined; if it was not advantageous, they did not.

In the 1920s, Michigan union members found little state protection for their organizations. Important legislative protection for unions came with the New Deal era. The Norris-LaGuardia act of 1932 outlawed yellow-dog contracts and protected unions against labor injunctions, anti-trust cases, and being held personally responsible for damages during a strike.[27] The purpose of the law was to restore the powers and protection to all workers that Congress thought they had bestowed with the Clayton Act. Meant to regulate court actions, the central

[25] *Adair v. United States*, 208 U.S. 161 (1908).

[26] Gregory Wood, "The Paralysis of the Labor Movement: Men, Masculinity, and Unions in 1920s Detroit," *Michigan Historical Review* 30 (Spring 2004), 60.

[27] Norris-LaGuardia Act, 29 U.S.C.A. § 101 et seq. 1932.

purpose of the act was to end labor injunctions by limiting them to instances where violence or fraud were present. When the federal government issued the law, progressive labor reform won out over voluntarism and unions lost their legal status as voluntary associations.[28]

New Deal legislation exposed the federal government as a protective force in American lives. Under the federal government's protective umbrella, state and local judges no longer controlled work relations. Employers experienced drastic incursions on the autonomy with which they dealt with workers. Laborers enjoyed a legislative climate that highlighted their value in the industrial system. In 1933, Congress passed the National Industrial Recovery Act, which was designed to improve the standards of labor. Although later deemed unconstitutional, the NIRA stressed workers as valuable members of society. The Wagner Act of 1935 further assisted workers through its provisions to allow workers to organize and bargain collectively.[29] The law made the federal government the authority over labor/management relations. The Fair Labor Standards Act also greatly affected industrial relations by establishing a maximum work week and a minimum wage.[30]

In the end, Michigan men never achieved control over industrial relations—the judiciary did. Although many workers had sought to use unions to foment real change and positive

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[28] Ruth O'Brien argues that progressives developed "responsible unionism" as an alternative to voluntarism. Progressives wanted to hold union members accountable for their actions. O'Brien shows that progressives "interwove the principles of agency into the act. As a result, rather than withdrawing the American state from labor-management relations, the act caused unions to begin to lose their status as private, voluntary associations, thus creating a foundations for the construction of the statist regulatory apparatus, the National Labor Relations Board, during the New Deal." Ruth O'Brien, "Business Unionism versus Responsible Unionism: Common Law Confusion, the American State, and the Formation of Pre-New Deal Labor Policy," *Law and Social Inquiry*, 18 (Spring 1993), 255.

[29] National Labor Relations Act, 29 U.S.C.A. § 151 et seq. 1935.

[30] Fair Labor Standards Act, 29 U.S.C.A. § 201 et seq., 1938.

control over labor conditions without state involvement, in the end government was an omnipresent force in their lives. The New Deal ushered in an era of ever-increasing federal control over workplace dynamics. Labor unions were forced to appeal to the government for change; government decided the virtue of their claims. This is not to say that unions abandoned legislative reform, but Michigan laborers retreated to a defensive position.

Male workers' legislative triumph is best seen in a post-World War II law regarding women working as bartenders.[31] In 1945, after extensive lobbying by the Bartenders' Union, Michigan legislators amended the Liquor Control Act of 1933 that had called for the licensing of bartenders. The new bartending act, Michigan Public Act 133, prohibited women whose fathers or husbands did not own a bar from bartending in cities with a population over 50,000. Although reformers had deemed protective labor legislation for women and children necessary in the early 1900s, by the 1940s more women saw protectionism in the law as detrimental to workplace equity. Through the bartending act, however, male bartenders kept women legally and economically dependent on men. Barmaids from Dearborn brought suit to have the law declared unconstitutional. When the Michigan Eastern District court upheld the law, women appealed to the United States Supreme Court, which validated the law as a constitutional use of a state's police powers.[32] The sponsorship of such a law by unionized men showed both male unions' and legislative power to control women at work.

This dissertation raises questions for further study. In Michigan, working men attempted to exert control over employer/employee relationships by supporting protective labor legislation. Did male laborers in other industrialized states seek the same protective structure? Did they use

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[31] *Public Acts of Michigan*, 1945, no. 133, 139-140.

[32] *Goesaert v. Cleary*, 74 F. Supp. 735; (1947) and *Goesaert v. Cleary*, 335 U.S. 464 (1948) respectively.

collective action? How did state judiciaries respond? Were certain unions better at creating parity than others? Transnational study would enhance our understanding of protective labor legislation for men. Although scholars have compared protective labor legislation for women in democratic nations with the United States, nations in which both male and female workers had no political voice have not been studied. Since men in the United States risked losing freedoms by allowing state control over employment contracts, they risked allowing the state to control them, as they did women. In nations where neither men nor women had anything to lose, did they work together to achieve power?

More study of the state's male workers is necessary. To what extent did competing views of manhood between workers and industrialists harm labor relations? How did ethnicity alter the narrative? To what extent did European understandings of the family economy shape outcomes among immigrants? Did employers strictly adhere to a gendered construction of individual men and attempt to enforce this construct on workers? What were the implications of protective labor legislation for unionized men after 1913? How did a sex-segregated labor system affect union membership in the 1910s and 1920s? Since the state largely controlled women's labor after 1909, what affect did this have on female unionization? Barbara Havira examines women's role in garment strikes in the early 1910s, but no one has extensively studied their role in Michigan strikes and unions in the Gilded Age and Progressive Era. Michigan judges endorsed workmen's compensation claims for widows more than for injured male workers—but why? Was this a judicial effort to protect women? A reaction to the worst outcome for the most serious workplace accident? Or yet another example of state-sponsored dependency? The *Withey* case

showed that some women opposed workday restrictions for women and children.[33] How many women agreed? More study would greatly enrich the history of Michigan's laborers.

[33] *Withey v. Bloem*, 163 Mich. 419 (1910).

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Goesaert v. Cleary, 335 U. S. 464 (1948).

APPENDIX A: LIST OF MICHIGAN PROTECTIVE LABOR LAWS

1867

No. 163, Molestation Act, one cannot disturb a laborer in the course of his work

1873

No. 185, Log-lien law, gives laborers a lien on laws for work

1877

No. 11, Baker Conspiracy Law, an act that prohibits any person from obstructing the regular operation and conduct of the business of railroad companies or other corporations, firms, or individuals

1883

No. 156, creates Bureau of Labor

No. 126, act that revises chapter 87 of revised statues of 1846 regarding masters/servants "Indenture law"

> Every male infant and every unmarried female under 18 with consent of parents, judges, guardians may of his/her own free will bind themselves in writing to serve as clerk, apprentice or servant in any profession, trade, or employment until 21 if male and 18 if female, shall be binding as if infant was of full age at time of making such engagement

No. 144, compulsory education of children

> School law forbidding employment of children in any business unless they had a certain amount of schooling

No. 157, act to protect the rights of laborers

> Any judgment for personal services performed by laborer shall not be stayed but issue immediately

No. 159, provides for incorporation of Knights of Labor

1885

No. 14, an act for the better protection of labor debts

No. 39, an act to regulate the employment of children and women (child labor and women law); prohibited children under 10 from working in factories, workshops, or warehouses; children under 14 must have some schooling to work four months of previous 12; no person under 18 and no woman should be employed for more than 10 hours daily 60 hours weekly in a manufacturing establishment and they should get an

hour for lunch; sec. 4 limits all women to ten hours a day children under 18; seats must be made available for women and their use permitted in factories, ware-houses, shops, stores, and hotels

No. 45, an act to insure payment of wages earned and for materials used in constructing, repairing, or ornamenting public building and public works

No. 137, ten hour day, in all factories, workshops, salt blocks, saw-mills, logging or lumber camps, booms or drives, mines or other places used for mechanical, manufacturing, or other purposes where men or women are employed ten hours shall constitute a legal day's work; employers compelled to pay overtime unless there is an agreement to the contrary; where contracts are silent ten hours is legal day's work; any person who tries to take unlawful advantage of persons in their employ because of poverty or misfortune is guilty of misdemeanor and pay fine which will go to public schools; does not apply to farm or domestic laborers or those who agree to work more than 10 hours

No. 145, an act to provide for the incorporation of societies to promote the interests of trade and labor

No. 147, requires safety couplers on railroad cars so that brakeman do not have to get between the rail cars

No. 160, act relative to workers on bridges

No. 188, an act to provide for enclosing, filling, or fencing of any shaft, pithole, or trench on any unenclosed or unoccupied lands

No. 189, amends Bureau of labor act

No. 209, an act to promote morality and to prevent crime, cannot employ women under 17 in houses of ill-fame

1887

No. 83, provides for incorporation of Ancient Order of United Workmen

No. 94, makes debts for labor preferred claims against the estates of debtors becoming insolvent

No. 118, an act to provide for the better protection of lives of passengers and employees on railroad trains

No. 136, Emery/Blower law, exhaust fans to carry away the dust from polishing wheels; does not apply to factories, saw mills, shingle mills, and workshops where wheels and belts are occasionally used and only by men not especially employed for that purpose (in other words this only applies to factories where this is standard)

No. 147, amends 157 of 1883 to protect rights of workers; allows for workers judgments to be executed immediately upon rendition of judgment and workers can recover attorney's fee if he wins his entire case

No 152, an act to prohibit the employment of male children under fourteen years of age and female children under sixteen years of age for more than nine hours a day"; limited the hours of labor for children to nine per day in all occupations except agriculture, domestic service, and clerks in stores; age for boys was 14; age for girls was 16

No. 193, an act to protect children and prevent them from being educated in immorality and crime

No. 213, calls for mine inspectors "Mine Inspection Act"

No. 229, revises log lien law

No. 270, mechanics lien law

No. 292, requires introduction and use of safety gates upon swing and draw bridges

1889

No. 21, amends no. 39 of 1885 regarding employment of women and children

No. 175, amends mechanic's lien

No. 225, no contracts, agreements, or combinations thereof to restrict or regulate the amount of production or the quantity of any article or commodity to be raised or produced by mining, manufacturing, agriculture, or any other branch of labor

No. 238, an act to provide for the amicable adjustment of grievances and disputes that may arise between employers and employees, and to authorize the creation of a state court of mediation and arbitration

No. 265-act to regulate the employment and provide for the safety of women and children in mercantile and manufacturing; limited hours for boys under 14 and girls under 15 to not more than 54 per week who were employed in factories, manufacturing establishments, mercantiles; raised minimum age for factory employment from 10 to 12; prohibited children under 14 from incurring the danger of cleaning machinery while in motion; must get parental permission; must keep register of children under 14; for adults: automatic doors/gates placed around hoisting shafts and well holes, all gearing and belting to be provided with safeguards; automatic shifters must be used where necessary; must remedy known defects in heating, lighting, ventilation, sanitation, means of egress, dangerous location of machinery, and unguarded condition of vats

No. 277, amends mechanic's lien law

1891

No. 23, repeals act that prohibited any person from obstructing the regular operation of railroad companies; repeals Baker act of 1877

No. 41, act to provide for the protection of associations an unions of workingmen and to punish fraudulent use of union labels

No. 116, amends no. 39 of 1885 regarding women and children's employment; no child under 14 may be employed without schooling

No. 179, reinforces mechanic's Lien

1893

No. 91, all persons employing women in stores shall provide seats for them when they are not actively employed; says that employers cannot prevent the use of them

No. 111, amends Blower act to include more people, but exempts grinding machines that use water

No. 126, Employment Act; no male under 18, no female under 21 to be employed more than 60 hours weekly, ten hours daily; no children under 14 employed in manufacturing establishments; keep register of kids under 16; parental permission; must post hours of labor in places employing women and children; factory inspector can demand a certificate of physical fitness; manufacturing establishment does not apply to places that employ less than five; factory inspection with inspector allowed to enforce provisions of this act; commission of labor can inspect hoisting shafts or well holes and order them enclosed or secured; elevator safety; hand rails on stairways; stairs screened; rubber treads when ordered; doors open outwardly; doors kept unlocked; fire escapes for more than three stories; automatic shifters, contrivances for worker safety, exhaust fans; written exit notification; no female under 21, male under 18 to clean machinery while in motion; washrooms and closets where women employed; dinner hour of 45 minutes

No. 148, prohibits opening of barber shops on Sundays

No. 177, regulates the length of time which shall be a day's labor by certain employees on railroads and to provide pro rata compensation for extra services; ten hours within 12 hours shall constitute a day's labor for steam, surface, and elevated railroads; any railroad worker who has worked twenty four hours must take off eight hours before returning to work

No. 192, act to protect toilers against unjust demands of employers of labor; to give redress to employees discharged in certain cases; and to punish employers for violation of this act; cannot make employees give to charity; cannot deduct wages without consent of employees

1895

No. 9, act to require street railway companies to protect certain employees from inclemency of weather from November 1 to April 1

No. 184, Factory Inspection Act; reiterates no man under 18 nor female under 21 may work more than 60 hours/ 10 hours; no child under 14 to be employed in manufacturing establishment; people employing children must keep register; no child under 16 may work in manufacturing where employment is dangerous to life, limb, health, or morals; no woman under 21, no man under 18 can work on machinery while in motion; factory inspectors may demand certificate of physical fitness; duty of owner as to care of openings to elevators; fire escapes to be provided; windows and doors to fire escapes open outwardly; signs to fire escapes posted in conspicuous spaces; hand rails for stairs; screens on stairs where females employed; owners of factories to furnish shifters for belts and provide safeguards; fans for carrying off dust; factories to be kept clean; water closets furnished; not less than 45 minutes for noon meal; duties of inspectors; act does not apply to canneries

No. 209, prohibits companies from requiring employees to procure life or accident insurance from a particular company

No. 220, warehouseman lien act

1897

No. 13, provides for the incorporation of labor associations

No. 92, amends Inspection Act no 184 of 1895; parental permission for children under 16, but no kids under 14; hoisting shafts or well holes to be enclosed; elevators to have automatic gates; supply dressing rooms; female water closets kept separate

No. 111, an act to fix the responsibility for making permanent improvements to manufacturing establishments where ordered by factory inspectors

No. 123, amends Mine Inspection Act; mine inspectors to condemn dangerous places; Inspector may order men to quit work; shafts to be furnished with safeguards; carriages carrying miners to be furnished with roofs of sorts

No. 143, amends Mechanic's Lien Law

No. 170, prohibit the employment of women as barkeepers, or to serve liquors, or for dancing, or to furnish music in any saloon or barroom where liquor is sold or kept for sale

No. 221, prohibits employers from paying employees in wages other than money except with consent of employee

No. 241, amends 184 of 1895 "Factory Inspection Act"; Commissioner of Labor to make annual inspection

1899

No. 57, an act to provide for the protection of the health, lives, and interests of the coal miners of Michigan and to provide for the inspection of all coal mines; inspector; escape shafts, cage regulation, weighman to be sworn in; fresh air supplied

No. 77, amends 184 of 1895 "Factory Inspection Act"; no child employed between 6 p.m. and 7 a.m.

No. 185, provides for employment of women physicians in certain institutions

No. 202, an act to provide fans or blowers in all workshops or establishments where wheels composed partly of emery or buffing wheels or emery belts are used

No. 212, act for examination and licensing of barbers

No. 233, amends "Factory Inspection Act"; no room or apartment in a tenement may be used for manufacture of goods such as clothing, cigars, purses, etc "Tenement Act" ; must obtain factory inspector permission to have certain amount of employees working; meant to stop sweatshops

No. 251, act to license and regulate commission men and brokers

No. 255, anti-trust law

1901

No. 18, labor lien law

No. 85, amends 185 of 1899 regarding employing women physicians

No. 94, labor lien law

No. 105, requires licensing and regulation of maternity hospitals and other places for pregnant females or regarding maternity (would eliminate midwives, puts maternity under care of state)

No. 113, Inspection Act, an act to provide for the inspection of manufacturing establishments, workshops, hotels and stores; to provide for the regulation of such establishments, and the employment of women and children therein; to regulate the conduct of sweatshops, to provide for enforcement of provisions of the act, and to make appropriations for carrying out enforcement; limits hours minors to be employed, men under 18, women under 21; limits age to be employed in manufacturing to 14; no child under 16 to be employed in dangerous labor; duty of owner in manufacturing places where hoisting shafts or well-holes are used to enclose and secure them and must keep elevators safe; fire escapes for 2 stories or more to ensure safety of employees, windows and doors should open outwardly, signs to be place to exits; stairways to have rails and if

needed rubber tread, screened when females employed; certain machinery to be guarded; exhaust fans provided; proper wash and dressing rooms; at least 45 minutes for lunch; does not apply to canneries; no manufacturing in tenements; must have adequate air space, light, heat and ventilation

1903

No. 39, an act to prevent the desertion and abandonment of wife or children by persons charged by law with the maintenance thereof; to make it a felony

No. 87, an act to fix responsibility for making permanent improvements to manufacturing establishments where ordered by factory inspectors

No. 106, an act to prescribe the duties and liabilities of employers and employees arising from the offer and acceptance of inducements for the performance of labor or service for hire at some point away from the home locality

No. 125, an act to amend the act to protect coal miners (regarding idle mines); calls for fences around idle mines

No. 193, act to amend the blower act (202 of 1899); no person shall operate wheels, buffers, or belts in basements

No. 197, act to amend no. 26 of 1899 regarding inspection of illuminating oils

1905

No. 37, act to establish free employment bureaus

No. 100, act to amend 57 of 1889 regarding protection of health, lives, and interests of coal miners; calls for inspector to collect stats regarding hours of labor, wages, sanitary conditions, and matters of scales; coal mine employees have right to name competent and fair check weighman, but must pay him; owner must provide timber for safety matters; ventilation; other safety measures; daily inspection of gaseous mines, no employees to enter gaseous mines until inspector cleared, inspection of shafts, passage-ways, landings, cages; cages must be fitted with handholds; mines to be equipped with two means of egress, code of signals, safety hooks, sanitary conditions

No. 158, amends hawkers and peddlers act of 1846 and comp laws of 1897; penalty for failure to produce license

No. 171, amends 113 of 1901 (act to provide for inspection of factories) changed to put more emphasis on the regulation of employment of women and children

No. 172, amends 202 of 1899 (blower act); sec. 7 no female shall be employed in operating or using any of the wheels or belts specified in this act

No. 187, act to secure the payment of workers on public works

No. 210, act to prohibit the corrupt influencing of agents, employees, or servants

No. 214, act to license transient merchants

No. 329, act regarding restraint of trade; all agreements, contracts, and combinations in restraint of trade or commerce are prohibited

1907

No. 140, amends to factory inspection law 113 of 1901; expands place to be inspected to include theaters, schools, halls, apartments, and public buildings; calls for fire escapes for two or more stories

No. 144, act to prevent desertion and abandonment of wife or children, makes felony, provides for care of dependent wife and children; repeals no. 39 of 1903

No. 152-"Foundry Inspection Act"--act to provide for regulation and inspection of foundries or establishments where metal castings or cores are made; to provide for the welfare and safety of persons therein; no obstructions in passage ways; exhaust fans, heating, lighting, hot water, pits around furnaces, emergency supplies must be kept on hand

No. 169-amends 113 of 1901 (inspection act); no male under 18 and no female shall be employed for more than 60 hours a week; no more than ten hours a day; may not be employed where life/limb endangered or health injured or morals depraved; proper heat and ventilation

No. 281, new act to provide for free employment bureaus and repeals old act of 1905

No. 291, act to pay overtime to convicts

No. 313, amends 156 of 1883 (Bureau of Labor Act); amendment regards types of stats to be collected

1909

No. 104, an act to prescribe the liability of common carrier railroad companies to their employees; companies are liable for damages that arise due to their negligence

No. 152, amends act 238 of 1889 provides compensation for arbitrator to settle disputes between employer and employee

No. 285, creates a department of labor to regulate the employment of labor; nine-hour law for women (men under 18) 54 hours in a week; excludes canneries; no female under 18 employed in manufacturing between 6 and 6; encompasses numerous other acts including those about safety measures and mining laws are absorbed into this

1911

No. 123, amends 285 of 1909 to allow prosecutor to prosecute labor law violations

No. 150, act providing for the employment of prison labor

No. 196, act defining the rights of married women to their own earnings

1912

No. 10, Employer's liability and workmen's compensation act; employers cannot use negligence as a defense; employers cannot use fellow servant rule or that employees assumed risk; does not apply to farm laborers or domestic servants; provides compensation for accidental injury or death; establishes an industrial accident board

1913

No. 50, amends workmen's comp act to define employers subject to act 1) municipalities 2) anyone who has contracted help

No. 59, an act regulating the time of payment of wages to employees of all manufacturing, mercantile, etc. companies doing business; must make semi-monthly payments; if employee leaves they get wages due; no company can make a contract to exempt themselves from this act

No. 160, regarding hand rails and screens

No. 161, heightens access and authority of Department of Labor

No. 228, mother's pension

No. 290, act creating commission of inquiry relative to minimum wages for female employees

1915

No. 3, amends Department of Labor act to call for sanitary quarters for railway construction crews

No. 104, amends Workmen's Comp to call for disbursement of compensation during first three weeks

1917

No. 41, defines terms of Workmen's Comp act; average annual earnings; average weekly wage

No. 174, act to provide for safety to life and property in the use and construction of steam boilers

No. 280, amends 285 of 1909 regarding employment of children

1919

No. 239, prohibits sex discrimination in the payment of wages “Equal Pay Act”, provided that no females be given work disproportionate to their strength or employed in a place detrimental to her health, morals, or potential capacity for motherhood

No. 320, must protect railway employees form winter elements with heated enclosures

No. 342, act providing for better protection of lives of passengers and employees on railroad trains; calls for first aid kits

No. 411, act regulating canning industry

APPENDIX B: PHOTO OF SAMPLE AND CAMP MILL

Photo of Sample and Camp Mill, Saginaw Valley, Goodridge Brothers Studio, circa 1885

Eddy Local History and Genealogical Collection, Hoyt Public Library, used with permission of the Public Libraries of Saginaw.

APPENDIX C: PHOTO OF MILL WORKERS

Mill workers, Saginaw Valley, Goodridge Brothers Studio, circa 1880s

Eddy Local History and Genealogical Collection, Hoyt Public Library, used with permission of the Public Libraries of Saginaw.

APPENDIX D: PHOTO OF MILL WORKERS

Mill workers, Saginaw Valley, Goodridge Brothers Studio, circa 1880s

Eddy Local History and Genealogical Collection, Hoyt Public Library, used with permission of the Public Libraries of Saginaw.

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ABSTRACT

'THE POWER TO PROTECT THEMSELVES': GENDER, PROTECTIVE LABOR LEGISLATION, AND PUBLIC POLICY IN MICHIGAN, 1883-1913

by

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This study provides a narrative of laborers' fight for legal protection through the Gilded Age and Progressive Era. Since American law was one of the most important forces in shaping and limiting workplace reform, both labor unionists and reformers used the law to try to solve labor problems. Reformers employed the law to force state control over women and children, while labor unionists attempted to craft legislation to allow working men control over industrial relations.

Although society and the law treated men as independent agents, working men were not truly free. Common law designated workers as servants. Employers denied laboring men the ability to make choices about hours of work, wages, employment conditions, and, in some cases, how free time was spent. Working men were free to contract their labor, but could not negotiate the terms of the contract. Working men did not sit equally at the bargaining table with employers. To assert control over industrial relations, working men sought protective labor legislation. Contrary to scholarly assumptions about men eschewing protective labor legislation, working-class men embraced protectionism; they did not think that protective labor laws would upset their status as wage earners or were an affront to their masculinity.

Constructions of gender transformed the way that workers fought for protection in the workplace and the manner in which legal officials implemented and interpreted protective labor laws. Despite workers' campaigning, the Michigan judiciary denied male workers protection while validating protective laws for women and children; in doing so, they created a gendered labor state. Public policy reinforced separate spheres of work for men and women and preserved breadwinning for men. This study shows how the state shaped workers experiences and how workers attempted to shape the state; it illustrates how gender transformed legal results for workers. It shows the commitment of the courts to a free labor ideology, but reveals the decisive role that masculinity played in judicial responses to labor law.

AUTOBIOGRAPHICAL STATEMENT

Amy Holtman French is an Instructor of History at Delta College in University Center, Michigan. She took a Bachelor of Arts degree from the University of Michigan in 1997. In 2003, she earned a Master of Arts degree from Central Michigan University. After fulfillment of the remaining doctoral requirements, of which this dissertation is a large part, she will hold a Ph.D. in History from Wayne State University. As a graduate student at Wayne State University, she won a Graduate Student Professional award in 2010.